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SETTLEMENT AGREEMENT

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**Case Name:**

**Court:** CA E.D. Cal.; 9th Cir.

**Notes:** SCANNED/UNASSIGNED: CALIFORNIA SPORTFISHING PROTECTION ALLIANCE V. MASONITE CORPORATION, ET AL

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**BY U.S. CERTIFIED MAIL**

August 18, 2017

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

Attorney General  
U.S. Department of Justice  
Citizen Suit Coordinator  
Room 2615  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: *California Sportfishing Protection Alliance v. Masonite Corporation, et al.*  
United States District Court Case No. 2:16-cv-01833-WBS-AC  
Settlement Agreement; 45-day review

Dear Citizen Suit Coordinators,

On August 15, 2017, the parties in the above-captioned case entered into a settlement agreement setting forth mutually agreeable settlement terms to resolve the matter in its entirety. Pursuant to the terms of the Consent Decree and 40 C.F.R. § 135.5, the enclosed settlement agreement is being submitted to the U.S. Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the settlement agreement, please feel free to contact me or counsel for Defendant listed below. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug J. Chermak".

Douglas J. Chermak  
Attorneys for Plaintiff California Sportfishing Protection Alliance

cc via First Class Mail: Alexis Strauss, Acting Regional Administrator, EPA Region 9

cc via e-mail: Nicole Granquist, Counsel for Defendants,  
ngranquist@downeybrand.com

Encl.

17 AUG 23 P 4:08  
DEPT. OF JUSTICE  
ENVIRONMENT DIVISION

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS**

This Settlement Agreement and Mutual Release of Claims ("Agreement") is between The California Sportfishing Protection Alliance ("CSPA" or "Plaintiff"), and Masonite Corporation ("Masonite") and Sierra Lumber, Inc. ("Sierra Lumber") (individually, "Defendant," and collectively, "Defendants") (CSPA, Masonite, and Sierra Lumber also individually, a "Settling Party," and collectively, the "Settling Parties").

### **I. RECITALS**

**WHEREAS**, CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of California's waters. Bill Jennings is the Executive Director of CSPA;

**WHEREAS**, Masonite Corporation is a corporation that owns and operates the facility located at 340 and 433 W. Scotts Avenue in Stockton, California ("Stockton Interior Facility") and Sierra Lumber, Inc. is a corporation that owns and operates the facility located at 375 Hazelton Avenue in Stockton, California ("Sierra Lumber Facility"). Sierra Lumber, Inc. is a wholly owned subsidiary of the Masonite Corporation. Storm water discharges associated with industrial activity at the Stockton Interior and Sierra Lumber Facilities are regulated pursuant to the National Pollutant Discharge Elimination System ("NPDES"), General Permit No. CAS000001, State Water Resources Control Board ("State Board") Water Quality Order No. 14-57-DWQ, issued pursuant to Section 402(p) of the Federal Water Pollution Control Act (the "Clean Water Act" or "Act"), 33 U.S.C. §1342(p), (hereinafter "General Permit") and, prior to July 1, 2015, were regulated by Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order Nos. 92-12-DWQ and 97-03-DWQ. Site maps for the Stockton Interior and Sierra Lumber Facilities are attached hereto as Exhibits A and B, respectively;

**WHEREAS**, on or about May 23, 2016, CSPA provided the Defendants, the Administrator and the Regional Administrator for Region IX of the United States Environmental

Protection Agency ("EPA"), the Executive Director of the California State Water Resources Control Board ("State Board"), and the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") with Notices of Violation and Intent to File Suit ("Notice Letters") under Section 505 of the Act, 33 U.S.C. § 1365;

**WHEREAS**, on or about August 3, 2016, CSPA filed a complaint against the Defendants in the United States District Court for the Eastern District of California, *CSPA v. Masonite Corporation and Sierra Lumber Manufacturers* (USDC, E.D. Cal., Case No. 2:16-cv-01833-WBS-AC ("Complaint"). A true and correct copy of the Complaint, including the Notice Letters, are attached hereto as Exhibit C;

**WHEREAS**, the Defendants deny all of CSPA's allegations and claims in the Notice Letters and Complaint, and denies that CSPA is entitled to the relief requested in the Complaint;

**WHEREAS**, the Settling Parties, through their authorized representatives and without either adjudication of CSPA's claims or admission by the Defendants of any alleged violation or other wrongdoing, intend by this Agreement to resolve in full CSPA's allegations in the Notice Letters and Complaint and avoid the cost and uncertainties of litigation;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Settling Parties hereby agree as follows:

## **II. JURISDICTION AND VENUE**

1. CSPA alleges that:
  - a) the Eastern District Court of California has jurisdiction over the subject matter of the claims asserted by CSPA in the Complaint pursuant to Sections 309 and 505(a)(1) of the Clean Water Act, 33 U.S.C. §§ 1319 and 1365, and 28 U.S.C. §§ 1331, 2201, 2202, and
  - b) venue for CSPA's Complaint is proper in the Eastern District Court of California

pursuant to Sections 309(b) and 505(c) of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1365(c), and 28 U.S.C. §§ 1391(b) and (c).

2. The Defendants deny CSPA's allegations, but for purposes of settlement, the Settling Parties waive all objections that they may have to the District Court's ability to retain jurisdiction over the Settling Parties and this Agreement as specified in Section IX of this Agreement.

### **III. EFFECT OF AGREEMENT**

3. CSPA does not, by its consent to this Agreement, or by concurrence with or failure to object to any activity undertaken by the Defendants pursuant to this Agreement, warrant or aver in any manner that the Defendant's compliance with this Agreement will constitute or result in compliance with any Federal, State, or local law or regulation. Nothing in this Agreement will be construed to affect or limit in any way the obligation of the Defendants to comply with all applicable Federal, State and local laws and regulations governing any activity required or addressed by this Agreement.

4. This Agreement and any payment made pursuant to this Agreement will not constitute evidence or be construed as a finding, adjudication, or acknowledgement of any fact, law, or liability by the Settling Parties. This Agreement and any payment made under this Agreement will not be construed as an admission of violation of any law, rule, regulation, permit, or administrative order by the Defendants. However, this Agreement and/or any payment pursuant to the Agreement may constitute evidence solely during dispute resolution or in other actions by either Settling Party seeking to enforce compliance with this Agreement. Except as otherwise provided in this Agreement, each Settling Party maintains and reserves any and all defenses and claims that it may have to any alleged violations that may be raised by the other Settling Party during the life of this Agreement.

#### **IV. EFFECTIVE DATE AND TERMINATION DATE**

5. The term “Effective Date,” as used in this Agreement, means the day the District Court enters an order granting the Settling Parties’ stipulation to dismiss CSPA’s claims with prejudice described in Section IX of this Agreement. The term “Termination Date,” as used in this Agreement, means either December 15, 2019, or, if occurring at a later date, through the conclusion of any formal dispute resolution process prescribed in paragraph 24 of this Agreement or until the completion of any payment required by this Agreement.

6. The term of this Agreement commences on the Effective Date and concludes on the Termination Date (the “Agreement Term”).

#### **V. MASONITE’S COMMITMENTS AT FACILITIES**

7. Compliance with General Permit & Clean Water Act. Upon the Effective Date, and throughout the term of this Agreement, the respective Defendants will operate the Stockton Interior and Sierra Lumber Facilities in compliance with the applicable requirements of the General Permit and the Clean Water Act, subject to any defenses available under the law and recognizing the actions described below.

8. Defendants’ Implementation of Specific Storm Water Best Management Practices.

A. Stockton Interior Facility (Masonite):

i. On or before September 30, 2017, Masonite will complete the implementation of the following storm water control best management practices (“BMPs”), which are additive to the Stockton Interior Facility’s existing BMPs:

a. Facility Maintenance. BMP maintenance shall be conducted monthly, or more frequently as needed, and sweeping conducted daily. Masonite will also cover/seal all outfalls during the dry season months (June through September).

b. Outdoor Storage. Masonite will remove or cover metal components stored outside;

c. Outfall 3C. Masonite will cap Outfall No. 3C as depicted on Exhibit A and cease discharge from this location.

ii. On or before November 1, 2018, Masonite will complete the implementation of the following BMPs:

a. Installation of Bay Separator. For Drainage Management Areas (“DMA”) B7b and B7c described on Exhibit A, Masonite will replace the existing Ditch Inlet Catch Basin (“DICB”) with a bay separator designed to treat the storm water flows from this watershed.<sup>1</sup>

b. Installation of DICB and Expansion of Existing Drainage Swale. For DMAs B4a and B4b, Masonite will install a new DICB, along with a new 10-inch diameter storm drain pipe to direct storm water runoff from the area to the existing drainage swale, which will be deepened to three (3) feet to increase capacity to capture and settle storm water from this drainage area.

c. Installation of New Drainage Swales. For DMA B3, Masonite will construct and install a 10 foot wide, 1 foot deep drainage swale behind the existing curb, and include Filtrexx Siltsoxx (or a comparable filter “sock” designed to provide filtration) anchored

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<sup>1</sup> The bay separator will be designed consistent with the specifications set forth in the following website: [http://www.baysaver.com/Working\\_With\\_Us/engineers/BaySeparator/specs.html](http://www.baysaver.com/Working_With_Us/engineers/BaySeparator/specs.html). In addition, the bay separator shall be sized in accordance with the flow-based design storm standards for treatment control BMPs set forth in the General Permit. See General Permit X.H.6.

with stakes across the swale at two locations, to capture, settle, and treat storm water from this drainage area. For DMA B8, Masonite will remove the disconnected piece of concrete sidewalk and install a 13.5 foot wide, 1 foot deep drainage swale to capture and provide settling for storm water from this drainage area.

d. Additional Installation of Filtrexx Siltsoxx. In addition to existing Filtrexx Siltsoxx, in DMAs B2b, B3, B5a, B5b, B6a, B6b, B6c, and B8, Masonite will install Filtrexx Siltsoxx (or a comparable filter “sock” designed to provide filtration) anchored by filter bags at the drop inlets or catch basins in these watersheds.

e. Downspout Filters. Masonite will install filters on roof downspouts for all buildings where industrial activity occurs inside and associated pollutants can escape via roof vents.

B. Sierra Lumber Facility (Sierra Lumber):

i. On or before September 30, 2017, Sierra Lumber will complete the implementation of the following storm water control BMPs, which are additive to the Sierra Lumber Facility’s existing BMPs:

a. Facility Maintenance. BMP maintenance shall be conducted monthly, or more frequently as needed, and sweeping conducted daily. Sierra Lumber will also cover/seal all outfalls during the dry season months (June through September).

b. Outdoor Storage. Sierra Lumber will remove or cover metal components stored outside.



ii. On or before November 1, 2018, Sierra Lumber will complete the implementation of the following BMPs:

a. Installation of Bay Separators. For DMAs A1a, A1b, A6a, A6b, and A7a, as depicted on Exhibit B, Sierra Lumber will install bay separators designed to treat storm water flows from these watersheds.<sup>2</sup>

b. Installation of Catch Basin Filters. For DMA A3, Sierra Lumber will replace the existing drop inlet with a Kristar FloGard® or similar style catch basin insert filter<sup>3</sup> or equivalent.

c. Installation of Filtrexx Siltsoxx. In addition to existing Filtrexx Siltsoxx, in DMAs A3, A5, and A8a, and A8b, Sierra Lumber will install Filtrexx Siltsoxx (or a comparable filter “sock” designed to provide filtration) anchored by filter bags at the drop inlets or catch basins in these watersheds.

d. Additional Monitoring Locations. Sierra Lumber will add new monitoring locations at Outfall Nos. 3 through 6 in accordance with the General Permit and the terms of this Agreement as depicted on Exhibit B.

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<sup>2</sup> The bay separator will be designed consistent with the specifications set forth in the following website: [http://www.baysaver.com/Working\\_With\\_Us/engineers/BaySeparator/specs.html](http://www.baysaver.com/Working_With_Us/engineers/BaySeparator/specs.html). In addition, the bay separator shall be sized in accordance with the flow-based design storm standards for treatment control BMPs set forth in the General Permit.

<sup>3</sup> The catch basin filter will be designed consistent with the specifications set forth in the following website: <http://www.kristar.com/index.php/drain-inlet-filtration/flogard-plus-catch>

e. Installation of Porous Pavers to Replace Impervious Surfaces.

To encourage infiltration and reduce the discharge of storm water off-site, Sierra Lumber will install porous pavers at DMAs A3, A5, A6a, A6b, and A7a.

9. Storm Water Pollution Prevention Plan (SWPPP) Amendments/Additional BMPs.

By October 15, 2017, Masonite and Sierra Lumber will formally amend the SWPPPs for the Stockton Interior and Sierra Lumber Facilities, respectively, to incorporate all of the relevant requirements of this Agreement, as well as revised maps for the Facilities. Revisions to the SWPPP maps will identify, among other things, the location of all storm water drop inlets, the direction of storm water flows, and the location of structural BMPs implemented at the Facilities. Defendants will provide CSPA with a copy of any amendments to the respective Facilities' SWPPPs made during the term of the Agreement within fourteen (14) calendar days of such amendment (including amendments to incorporate the work specified In Paragraph 8.B.ii.a. of this Agreement at the Sierra Lumber Facility once complete).

10. Sampling Frequency. For the 2017-2018 reporting year (beginning on July 1, 2017 and ending on June 30, 2018) and the 2018-2019 reporting year (beginning July 1, 2018 and ending on June 30, 2019), at both the Stockton Interior Facility and the Sierra Lumber Facility, Masonite and Sierra Lumber shall respectively collect and analyze samples for the constituents currently sampled and analyzed at each respective Facility, from three (3) Qualifying Storm Events<sup>4</sup> ("QSEs") during each half of the reporting year, provided three (3) QSEs occur at each Facility during each half of the reporting year. The storm water sample results shall be compared with the values set forth in Exhibit D, attached hereto, and

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<sup>4</sup> A Qualifying Storm Event (QSE) is defined in the General Permit as a precipitation event that: (a) Produces a discharge for at least one drainage area; and (b) is preceded by 48 hours with no discharge from any drainage area. See General Permit, Section XI(b)(1).

incorporated herein by reference. If the results of samples exceed the parameter values set forth in Exhibit D as described further in Paragraph 12 at the Facilities, Masonite and/or Sierra Lumber, as applicable, shall comply with the "Action Plan" requirements set forth below.

11. Documents. During the Agreement Term, the Defendants shall provide CSPA with a copy of all documents submitted to the Regional Board or the State Board concerning the respective Facilities' storm water discharges, including but not limited to all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit. However if the information is uploaded by Defendants to the SMARTS database; Defendants shall instead provide CSPA email notification that documents have been uploaded to the SMARTS database within fourteen (14) days of having knowledge of said upload. Such documents and reports shall be mailed to CSPA contemporaneously with submission to such agency. Also during the Agreement Term, within twenty business (20) days of a written request (via e-mail or regular mail) by CSPA, the Defendants also shall provide CSPA a copy of all respective documents referenced in this Agreement from the year prior to the request, including but not limited to logs, photographs, or analyses.

## **VI. ACTION PLAN**

12. Action Plan Trigger and Contents. If for each separate Facility, samples taken during the 2017-2018 and 2018-2019 reporting periods referenced in Paragraph 10 above exceed the annual evaluation levels set forth in Exhibit D, or two or more sampling results for a particular parameter/pollutant exceed the instantaneous levels set forth in Exhibit D, or if Masonite or Sierra Lumber do not respectively collect and analyze the number of samples prescribed in Paragraph 10, or if the Defendants fail to timely comply with any obligation set forth in this Agreement in any material respect, Masonite or Sierra Lumber, or both, will prepare a written statement discussing the exceedance(s), the failure or inability to collect and analyze the number of samples prescribed by Paragraph 10 (e.g., due to the weather patterns), and/or the

Lumber Facilities during the Agreement Term, if requested by CSPA. This inspection will be performed by CSPA's counsel and consultant(s) and may include sampling, photographing, and/or videotaping of exterior grounds, including storm water management-related features. CSPA will provide the respective Defendants with a copy of all sampling reports, photographs and/or video. CSPA will provide the respective Defendant at least seven (7) business days advance notice of such physical inspection, except that the respective Defendant will have the right to deny access if circumstances would make the inspection unduly burdensome and pose significant interference with operations or the schedule of any party and/or attorney, or the safety of individuals. In such case, the respective Defendant will specify at least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed. The Defendants will not make any alterations to facility conditions during the period between receiving CSPA's initial seven (7) business days advance notice and the start of CSPA's inspection that the Defendants would not otherwise have made but for receiving notice of CSPA's request to conduct a physical inspection of a facility, excepting any actions taken in compliance with any applicable laws or regulations. Nothing in this Agreement will be construed to prevent the Defendants from continuing to implement or augment any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time. CSPA agrees that it will comply with the standard terms of facility access for these Facilities, as set forth in Exhibit E.

**VIII. PAYMENT OF FEES AND COSTS, MONITORING OF SETTLEMENT AGREEMENT COMPLIANCE, AND MITIGATION PAYMENT**

17. Fees and Costs. To help defray CSPA's attorneys, consultant, and expert fees and costs, and any other costs incurred as a result of investigating, filing the Complaint, and negotiating a settlement, and as reimbursement for any and all of CSPA's future fees and costs that will be incurred in order for CSPA to monitor the Defendants' compliance with this

Agreement during the Agreement Term, including the evaluation of Annual Reports and, if necessary, Action Plans, the Defendants will pay CSPA the sum of forty-five thousand (\$45,000) which includes all attorneys' fees and costs for all services performed by and on behalf of CSPA by its attorneys and consultants up to and through the Effective Date. The payment will be made within thirty (30) days of the Effective Date, provided the payee has tendered a current fully executed IRS Form W-9. The payment will be made in the form of a ACH transfer, payable to "Lozeau Drury LLP," and will constitute full satisfaction of all costs of litigation incurred by CSPA that have or could have been claimed in connection with or arising out of the Notice Letters and Complaint at the Stockton Interior and Sierra Lumber Facilities, up to and including the Effective Date.

18. Mitigation Payment. In recognition of the good-faith efforts by the Defendants to comply with the General Permit, the federal Clean Water Act, and the California Porter-Cologne Water Quality Control Act, and in lieu of payment by the Defendants of any penalties and costs which may have been assessed if the Complaint had proceeded to trial and CSPA prevailed, the Settling Parties agree that the Defendants will collectively pay the total sum of sixty-five thousand dollars (\$65,000) to the Rose Foundation for Communities and the Environment ("Rose Foundation") provided the Rose Foundation tenders a current fully executed IRS Form W-9. The sole purpose of providing funding to the Rose Foundation is to benefit projects to improve water quality in local watersheds of San Joaquin County. The Parties will recommend that half of the funds be directed to one or more proposals submitted by the Nature Conservancy and/or American Rivers, if a suitable grant application is submitted to the Rose Foundation within six (6) months of the Effective Date of this Agreement. To be suitable, a grant application submitted shall include, but not be limited to, a description of the anticipated benefits to water quality in local watersheds of San Joaquin County from the project and a program designed to quantify the project's anticipated benefits to water quality in local watersheds of San

Joaquin County. If grant application(s) are not submitted by the Nature Conservancy and/or American Rivers, the Rose Foundation retains discretion to direct the funds consistent with this paragraph. The Rose Foundation shall not retain any portion of the funds, except for the normal cost necessary to cover its overhead, not to exceed 10% of the total project fund. Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 1970 Broadway, Suite #600, Oakland, CA 94612, Attn: Tim Little. Payment shall be made by the Defendants by ACH transfer payable to the "Rose Foundation" within thirty (30) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 5 of this Agreement. The Defendants shall copy CSPA with any correspondence sent to the Rose Foundation. The Rose Foundation shall provide notice to the Settling Parties within thirty (30) days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and purpose of the funds.

#### **IX. COMMITMENTS OF CSPA**

19. Submission of Agreement to Federal Agencies. CSPA will submit a copy of this Agreement to the EPA and the United States Department of Justice ("DOJ") within three (3) business days of its execution for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) days after receipt by both agencies, as evidenced by the certified return receipts, copies of which CSPA will provide to the Defendants. In the event that EPA or DOJ comment negatively on the provisions of this Agreement, the Settling Parties will meet and confer to attempt to resolve the issue(s) raised by EPA or DOJ. If CSPA and the Defendants are unable to resolve any issue(s) raised by the Agencies in their comments, CSPA and the Defendants agree to expeditiously seek a settlement conference with the Magistrate Judge assigned to this matter to resolve the issue(s).

20. Stipulation to Dismiss With Prejudice and [Proposed] Order. Within ten (10) calendar days of the expiration of the agencies' review period specified in Paragraph 19 above,

CSPA will file a Stipulation to Dismiss With Prejudice and [Proposed] Order thereon pursuant to Federal Rule of Civil Procedure 41(a)(2) with the United States District Court for the Eastern District of California ("District Court"), with this Agreement attached as Exhibit 1 thereto and incorporated by reference, specifying that CSPA is dismissing with prejudice all claims in CSPA's Complaint. The Stipulation to Dismiss with Prejudice and [Proposed] Order must state that the District Court will maintain jurisdiction over the parties for purposes of resolving any disputes between the Settling Parties with respect to any provision of this Agreement incorporated into the Court's dismissal order. In resolving such disputes, the Court may order any appropriate remedy including, but not limited to, contempt sanctions. CSPA is responsible for notifying the Defendants of the District Court's entry of the order dismissing with prejudice. If the District Court chooses not to enter the order, this Agreement will be null and void.

**X. BREACH OF AGREEMENT/DISMISSAL ORDER AND DISPUTE  
RESOLUTION PROCEDURES**

21. Force Majeure. The Defendants will notify CSPA if timely implementation of the Defendants' respective duties under this Agreement becomes impossible due to circumstances beyond the control of the Defendants or its agents, and which could not have been reasonably foreseen and prevented by the respective Defendants' exercise of due diligence. Any delays due to the Defendants' respective failure to make timely and bona fide applications and to exercise diligent efforts to comply with the terms in this Agreement will not, in any event, be considered to be circumstances beyond the Defendants' control. Financial inability will not, in any event, be considered to be circumstances beyond the Defendants' control.

a. If a Defendant claims impossibility, it will notify CSPA in writing within twenty (20) business days of the date that the Defendant discovers the event or circumstance that caused or would cause non-performance with the terms of this Agreement, or the date the Defendant should have known of the event or circumstance by the exercise of due diligence. The notice must describe the reason for the non-performance and specifically refer to this section

of this Agreement. The notice must describe the anticipated length of time the non-performance may persist, the cause or causes of the non-performance, the measures taken or to be taken by the Defendant to prevent or minimize the non-performance, the schedule by which the measures will be implemented, and the anticipated date of compliance. The respective Defendant will adopt all reasonable measures to avoid and minimize such non-performance.

b. The Settling Parties will meet and confer in good faith concerning the non-performance and, if the Settling Parties concur that performance was or is impossible, despite the timely good faith efforts of the Defendant, due to circumstances beyond the control of the Defendant that could not have been reasonably foreseen and prevented by the exercise of due diligence by the Defendant, new performance deadlines will be established.

a. If CSPA disagrees with the Defendant's notice, or in the event that the Settling Parties cannot timely agree on the terms of new performance deadlines or requirements, either Settling Party may invoke the dispute resolution process described in Paragraphs 23 and 24 of this Agreement. In such proceeding, the Defendant will bear the burden of proving that any delay in performance of any requirement of this Agreement was caused or will be caused by force majeure and the extent of any delay attributable to such circumstances.

22. The dispute resolution process set forth in Paragraphs 24 and 25 of this Agreement will be the exclusive mechanism for resolving disputes between the Settling Parties with regard to any aspect of this Agreement.

23. Informal Dispute Resolution. The Settling Parties will engage in "Informal Dispute Resolution" pursuant to the terms of this paragraph:

a. If a dispute under this Agreement arises, including whether any Settling Party believes that a violation of the Agreement and the Court's dismissal order has occurred, the Settling Parties will meet and confer (telephonically or in-person) within twenty-one (21) days of receiving written notification of a request for such meeting. During the meet and confer



proceeding, the Settling Parties will discuss the dispute and make reasonable efforts to devise a mutually acceptable plan, including implementation dates, to resolve the dispute. The Settling Parties may, upon mutual written agreement, extend the time to conduct the meet and confer discussions beyond twenty-one (21) days.

b. If any Settling Party fails to meet and confer within the timeframes set forth in paragraph (a) directly above, or the meet and confer does not resolve the dispute, after at least twenty-one (21) days have passed after the meet and confer occurred or should have occurred, either Settling Party may initiate the "Formal Dispute Resolution" procedures outlined directly below.

24. Formal Dispute Resolution. In any action or proceeding which is brought by any Settling Party against any other Settling Party pertaining to, arising out of, or related to the requirements of the Court's dismissal order and this Agreement, the Settling Parties will first utilize the "Informal Dispute Resolution" meet and confer proceedings set forth in the preceding paragraph and, if not successful, the Settling Parties will utilize the "Formal Dispute Resolution" procedures in this paragraph. "Formal Dispute Resolution" will be initiated by filing a Motion to Show Cause or other appropriately titled motion ("Motion") in the United States District Court, Eastern District of California, to determine whether either party is in violation of the Agreement and the Court's dismissal order and, if so, to require the violating party to remedy any violation identified by the District Court within a reasonable time frame. Litigation costs and fees incurred in the Formal Dispute Resolution process will be awarded in accord with the standard established by Section 505 of the Clean Water Act, 33 U.S.C. § 1365.

## **XI. NOTICES AND SUBMISSIONS**

25. Defendants will provide CSPA with all documents or reports required by this Agreement. All notices or any other correspondence pertaining to this Agreement will be sent by regular, certified, overnight, or electronic mail as follows:

If to CSPA:

Douglas Chermak  
Michael Lozeau  
LOZEAU | DRURY LLP  
410 12th Street, Suite 250  
Oakland, CA 94607  
Telephone: (510) 836-4200  
Email: doug@lozeaudrury.com  
michael@lozeaudrury.com

Bill Jennings, Executive Director  
The California Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204  
E-mail: DeltaKeep@me.com

If to the Defendants:

Facility Manager, Stockton Interior Facility  
Masonite Corporation  
433 W. Scotts Avenue  
Stockton, California 95204

Facility Manager, Sierra Lumber Facility  
Sierra Lumber, Inc.  
375 Hazelton Avenue  
Stockton, California 95204

Mark Valadez  
Regional EHS Manager  
Masonite Corporation  
433 W. Scotts Avenue  
Stockton, California 95204  
Telephone: (209) 942-5626, ext. 4117  
Email: mvaladez@masonite.com

James R. Rabe  
V.P., EHS  
Masonite International Corporation  
1955 Powis Road  
West Chicago, Illinois 60185  
Email: jRabe@Masonite.com

General Counsel  
Masonite International Corporation  
201 N. Franklin Street, Suite 300  
Tampa, Florida 33602  
Telephone: (813) 877-2726  
Email: LDepartment@Masonite.com

Nicole E. Granquist  
Downey Brand LLP  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814  
Telephone: (916) 444-1000  
Email: ngranquist@downeybrand.com

26. Notices or communications will be deemed submitted on the date that they are postmarked and sent by first-class mail, deposited with an overnight mail/delivery service, or sent via electronic message. Any change of address or addresses must be communicated in writing in the manner described above for giving notices. In addition, the Settling Parties may agree to transmit documents electronically or by facsimile.

27. During the Agreement Term, the Settling Parties will preserve at least one legible copy of all records and documents, including computer-stored information, which relate to performance of its obligations under this Agreement.

## **XII. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

28. As of the Effective Date of this Agreement, each Settling Party and its successors, affiliates, assigns, directors, officers, agents, attorneys, representatives, and employees, hereby release the other Settling Party, including all of the Defendants' successors, affiliates, assigns, directors, officers, agents, attorneys, representatives, and employees, from any and all claims and demands of any kind, nature, or description, and from any and all liabilities, relief, damages, fees (including fees of attorneys, experts, and others), injuries, actions, or causes of action, either at

law or in equity, whether known or unknown, except for continuing obligations as provided for in Section X of this Agreement, which the Settling Parties have against each other arising from CSPA's allegations and claims as set forth in the Notice Letters and Complaint at the Stockton Interior and Sierra Lumber Facilities up to and including the Termination Date of this Agreement.

29. The Settling Parties acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from the allegations and claims as set forth or that could have been set forth in the Notice Letters and/or the Complaint at the Stockton Interior and Sierra Lumber Facilities up to and including the Termination Date of this Agreement.

30. Except as provided for in Section X of this Agreement, CSPA and its officers, executive staff, members of its governing board and any organization under the control of CSPA, its officers, executive staff, or members of its governing board, shall not pursue or file any action against the Defendants seeking relief for any alleged violation of the Clean Water Act or the General Permit, or any revisions thereto, or similar federal and state statutes and/or regulations, at the Masonite and/or Sierra Lumber Facilities for the period of time beginning on the Effective Date and ending on the Termination Date. CSPA will not support other lawsuits, by providing financial assistance, personnel time, or other affirmative actions, against the Defendants' Masonite or Sierra Lumber Facilities that may be proposed by other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge either Facilities' compliance with the Clean Water Act or the General Permit, or any revisions thereto, or similar

federal and state statutes and/or regulations. This provision is applicable and will survive beyond the Termination Date of this Agreement.

### **XIII. GENERAL PROVISIONS**

31. **Construction.** The language in all parts of this Agreement will be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the General Permit, Clean Water Act, or specifically herein.

32. **Choice of Law.** This Agreement will be governed by the laws of the United States, and where applicable, the laws of the State of California.

33. **Severability.** In the event that any provision, section, or sentence of this Agreement is held by a court to be unenforceable, the validity of the remaining enforceable provisions will not be adversely affected.

34. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one original document. Telecopy, .pdf, and/or facsimile copies of original signature will be deemed to be originally executed counterparts of this Agreement.

35. **Assignment.** Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement will inure to the benefit of and be binding upon the Settling Parties, and their successors and assigns, except in the case where either Facility is sold to an unaffiliated third party.

36. **Modification of the Agreement:** This Agreement may not be changed, waived, discharged or terminated, other than termination pursuant to Section V of this Agreement, unless by a written instrument, signed by the Settling Parties.

37. **Full Settlement.** This Agreement constitutes a full and final settlement of the Notice Letters and Complaint and the related legal action. Each Settling Party has freely and

voluntarily entered into the Agreement with and upon advice of counsel.

38.       **Integration Clause.** This is an integrated agreement. This Agreement is intended to be a full and complete statement of the terms of the agreement between the Settling Parties and expressly supersedes any and all prior oral or written agreements, covenants, representations and warranties (express or implied) concerning the subject matter of this Agreement.

39.       **Negotiated Agreement.** The Settling Parties have negotiated this Agreement, and it will not be construed against the party preparing it, but will be construed as if the Settling Parties jointly prepared this Agreement and any uncertainty and ambiguity will not be interpreted against any one Settling Party.

40.       **Authority.** The undersigned representatives for CSPA and the Defendants each certify that he or she is fully authorized resents to enter into the terms and conditions of this Agreement on behalf of that party.

41.       **Cure.** Except in case of an emergency but subject to the regulatory authority of any applicable governmental authority, any breach of or default under this Agreement capable of being cured will be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default, or within such other period approved in writing by the Settling Party not making such allegation, which approval may not be unreasonably withheld, the Settling Party allegedly in breach or default has actually cured or, if the breach or default can be cured but is not capable of being cured within such five (5) day period, has commenced and is diligently pursuing to completion a cure.

42.       **Facility Closure or Sale.** If Masonite or Sierra Lumber announce either the closure of industrial operation at either the Stockton Interior or Sierra Lumber Facilities, or the sale of the Stockton Interior or Sierra Lumber Facilities, in either case, prior to the deadlines applicable to the installation of BMPs set forth in Paragraph 8, then Masonite and/or Sierra

Lumber (respectively) will be relieved of its obligation to install the specified BMPs thereafter so long as closure or sale is effectuated within a commercially reasonable time following the announcement. In the event of Masonite or Sierra Lumber's closure or sale of the Stockton Interior or Sierra Lumber Facilities, respectively, Masonite and/or Sierra Lumber will notify CSPA within fourteen (14) calendar days of the announcement referenced above. Thereafter, Masonite and/or Sierra Lumber will provide CSPA with confirmation of physical closure within thirty (30) days of completing closure activities; such notification shall include pertinent documentation confirming the closure (*e.g.*, Notice of Termination submitted to the State) in addition to digital photographs. Closure activities include taking action to remove or cover remaining industrial materials stored or located outside so as to minimize further exposure to storm water.

43.       **Court Approval.** If for any reason the District Court declines to approve this Agreement in the form presented, the Settling Parties will use reasonable efforts to work together to modify the Agreement within thirty (30) days of receiving notice by District Court so that it is acceptable to the District Court. If the Settling Parties are unable to modify this Agreement in a mutually acceptable manner that is also acceptable to the District Court, this Agreement will immediately be null and void as well as inadmissible as a settlement communication under Federal Rule of Evidence 408.

44.       **Definition of Terms.** Unless otherwise expressly defined herein, terms used in this Agreement, which are defined in the Act or the General Permit, or in regulations implementing this statute, have the meaning assigned to them in the applicable statutes or regulations. The term "day" as used herein means a calendar day. In computing any period of time under this Agreement, where the last day of such period is a Saturday, Sunday, or Federal or State Holiday, the period runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State Holiday. The term "year" means a calendar year, unless otherwise

specified.

The Settling Parties are signing this Agreement as of the date opposite each respective signature.

The California Sportfishing Protection Alliance

Date:

15 August 2017



By: Bill Jennings

Masonite Corporation

Date:

By: James R. Rabe

Sierra Lumber, Inc.

Date:

By: James R. Rabe

Approved as to Form

Date:

LOZEAU DRURY LLP

By: Douglas J. Chermak  
Attorney for Plaintiff



specified.

The Settling Parties are signing this Agreement as of the date opposite each respective signature.

The California Sportfishing Protection Alliance

Date: \_\_\_\_\_

By: Bill Jennings

Masonite Corporation

Date: \_\_\_\_\_

By: James R. Rabe

Sierra Lumber, Inc.

Date: \_\_\_\_\_

By: James R. Rabe

Approved as to Form

Date: August 17, 2017

LOZEAU DRURY LLP

By:   
Douglas J. Chermak  
Attorney for Plaintiff

specified.

The Settling Parties are signing this Agreement as of the date opposite each respective signature.

The California Sportfishing Protection Alliance

Date: \_\_\_\_\_

By: Bill Jennings

Masonite Corporation

Date: 8/10/17

By: James R. Rabe

Sierra Lumber, Inc.

Date: 8/10/17

By: James R. Rabe

Approved as to Form

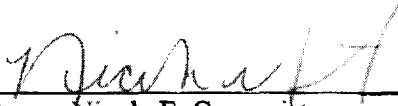
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LOZEAU DRURY LLP

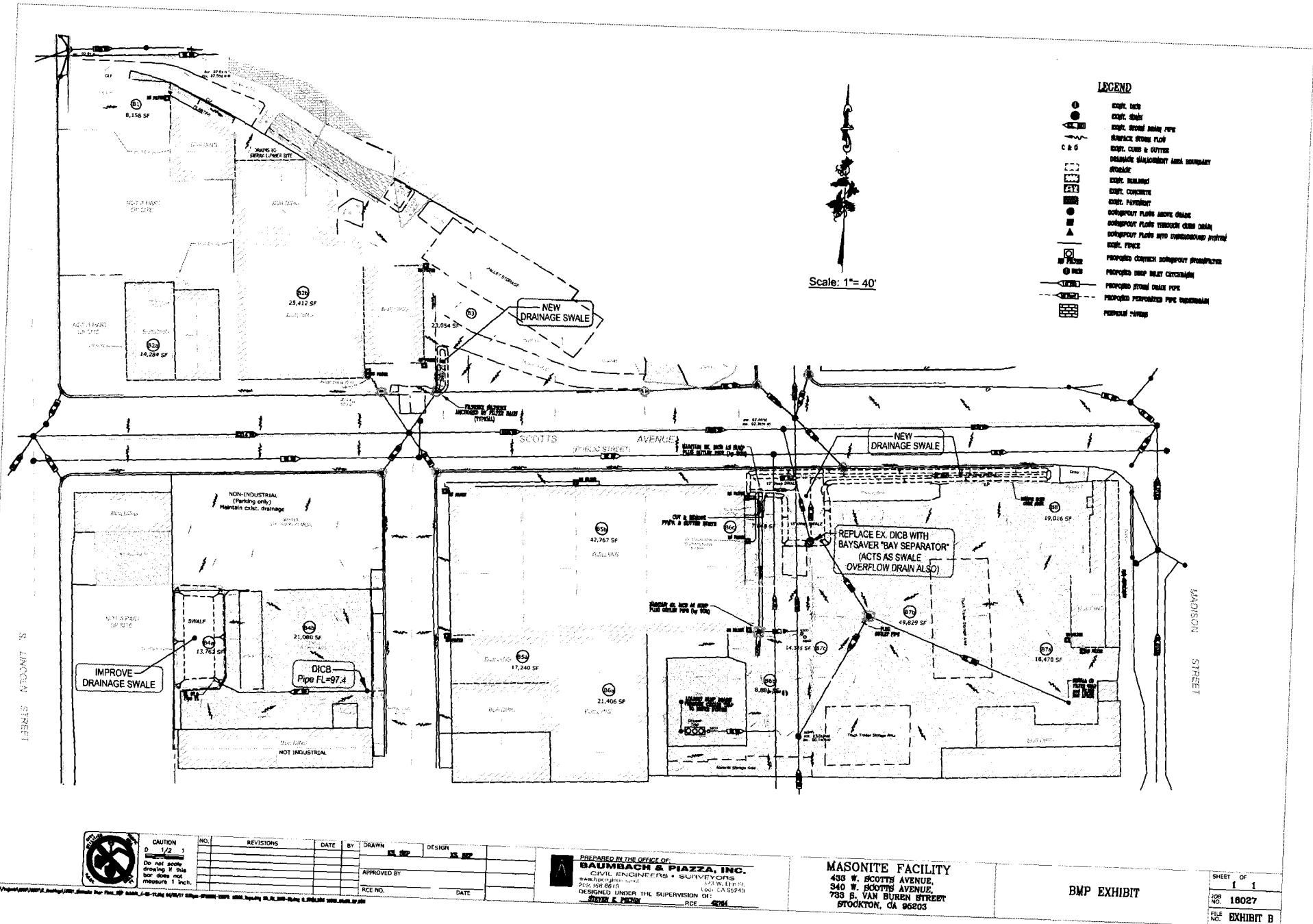
By: Douglas J. Chermak  
Attorney for Plaintiff

Date: 8/15/17

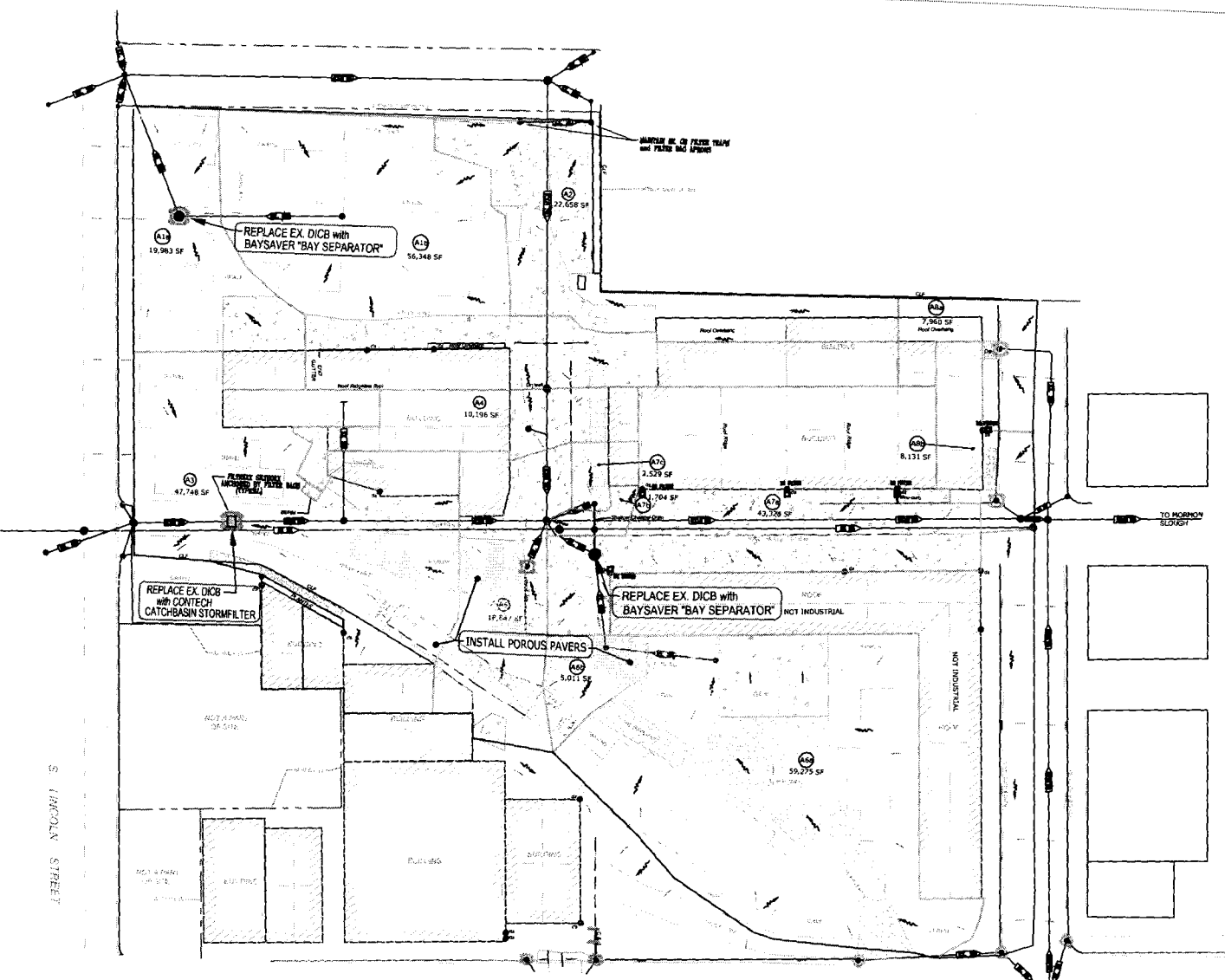
DOWNEY BRAND LLP

  
By: Nicole E. Granquist  
Attorney for Defendants

**EXHIBIT A – Masonite Facility Drainage/Site Map**



**EXHIBIT B – Sierra Lumber Facility Drainage/Site Map**



- LEGEND**
- EXIST. DIB
  - EXIST. FLOW
  - EXIST. STORM DRAIN PIPE
  - EXIST. FENCE
  - SURFACE FLOOD FLOW
  - WASTEWATER MANAGEMENT AREA BOUNDARY
  - STORAGE
  - EXIST. BUILDING
  - EXIST. CONCRETE
  - EXIST. PAVEMENT
  - PROPOSED FLOW ABOVE GRADE
  - PROPOSED FLOW THROUGH CATCH BASIN
  - PROPOSED FLOW INTO UNDERGROUND SYSTEM
  - PROPOSED CONTECH DITCH BASIN STORMFILTER
  - PROPOSED PAVING

Scale: 1"= 40'



**CAUTION**  
0 1/2 1  
Do not scale  
drawing if this  
bar does not  
measure 1 inch.

| NO. | REVISIONS | DATE | BY | DRAWN | DESIGN |
|-----|-----------|------|----|-------|--------|
|     |           |      |    |       |        |
|     |           |      |    |       |        |
|     |           |      |    |       |        |

APPROVED BY: \_\_\_\_\_  
RCE NO. \_\_\_\_\_ DATE \_\_\_\_\_

PREPARED IN THE OFFICE OF:  
**BAUMBACH & PIAZZA, INC.**  
CIVIL ENGINEERS • SURVEYORS  
www.bpi-inc.com 205 908 6610 FAX 205 908 6611  
DESIGNED UNDER THE SUPERVISION OF:  
**STEVEN A. PIERCE** RCE 44784

**SIERRA LUMBER FACILITY**  
375 W. HAZELTON AVENUE  
STOCKTON, CA 95203

**BMP EXHIBIT**

|           |           |
|-----------|-----------|
| SHEET     | OF        |
| 1         | 1         |
| JOB NO.   | 16026     |
| TITLE NO. | EXHIBIT A |

**EXHIBIT C – Complaint and Notice Letters**



Michael R. Lozeau (State Bar No. 142893)  
Douglas J. Chermak (State Bar No. 233382)  
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doug@lozeaudrury.com

Attorneys for Plaintiff  
CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE, a non-profit  
corporation,

Plaintiff,

vs.

MASONITE CORPORATION, a  
corporation; SIERRA LUMBER  
MANUFACTURERS, a corporation,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA"), a California non-profit association, by and through its counsel, hereby alleges:

**I. JURISDICTION AND VENUE**

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is authorized pursuant to

COMPLAINT

1 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of actual controversy and further  
2 necessary relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and  
3 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

4 2. On May 23, 2016, Plaintiff provided notice of Defendant Masonite Corporation's  
5 violations of the Act, and of Plaintiff's intention to file suit against Defendant Masonite Corporation,  
6 to the Administrator of the United States Environmental Protection Agency ("EPA"); the  
7 Administrator of EPA Region IX; the Executive Director of the State Water Resources Control  
8 Board ("State Board"); the Executive Officer of the California Regional Water Quality Control  
9 Board, Central Valley Region ("Regional Board"); and to Defendant Masonite Corporation, as  
10 required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA's notice letter to  
11 Defendant Masonite Corporation is attached as Exhibit A, and is incorporated by reference.

12 3. On May 23, 2016, Plaintiff provided notice of Defendant Sierra Lumber  
13 Manufacturers' violations of the Act, and of Plaintiff's intention to file suit against Defendant Sierra  
14 Lumber Manufacturers, to the Administrator of EPA; the Administrator of EPA Region IX; the  
15 Executive Director of the State Board; the Executive Officer of the Regional Board; and to  
16 Defendant Sierra Lumber Manufacturers, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true  
17 and correct copy of CSPA's notice letter to Defendant Sierra Lumber Manufacturers is attached as  
18 Exhibit B, and is incorporated by reference.

19 4. More than sixty days have passed since notices were served on Defendants and the  
20 State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that neither the  
21 EPA nor the State of California has commenced or is diligently prosecuting a court action to redress  
22 the violations alleged in this complaint. This action's claim for civil penalties is not barred by any  
23 prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

24 5. Venue is proper in the Eastern District of California pursuant to Section 505(c)(1) of  
25 the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial  
26 district. Pursuant to Local Rule 3-120, intradistrict venue is proper in Sacramento, California,  
27 because the source of the violations is located within San Joaquin County.  
28

1 **II. INTRODUCTION**

2 6. This complaint seeks relief for Defendants' discharges of polluted storm water from  
3 Defendant Masonite Corporation's industrial facility located at 435 W. Scotts Avenue in Stockton,  
4 California ("Masonite Facility") and from Defendant Sierra Lumber Manufacturers' industrial  
5 facility located at 375 Hazelton Avenue in Stockton, California ("Sierra Lumber Facility") in  
6 violation of the Act and National Pollutant Discharge Elimination System ("NPDES") Permit No.  
7 CAS000001, State Water Resources Control Board Water Quality Order No. 97-03-DWQ ("1997  
8 Permit"), as renewed by Water Quality Order No. 2014-0057-DWQ ("2015 Permit") (the permits  
9 are collectively referred to hereinafter as the "Permit" or "General Permit"). Defendants' violations  
10 of the discharge, treatment technology, monitoring requirements, and other procedural and  
11 substantive requirements of the Permit and the Act are ongoing and continuous.

12 **III. PARTIES**

13 7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA") is  
14 a non-profit public benefit corporation organized under the laws of the State of California with its  
15 main office in Stockton, California. CSPA has approximately 2,000 members who live, recreate and  
16 work in and around waters of the State of California, including the San Joaquin River. CSPA is  
17 dedicated to the preservation, protection, and defense of the environment, the wildlife and the  
18 natural resources of all waters of California. To further these goals, CSPA actively seeks federal and  
19 state agency implementation of the Act and other laws and, where necessary, directly initiates  
20 enforcement actions on behalf of itself and its members. CSPA brings this action on behalf of its  
21 members. CSPA's interest in reducing Defendants' discharges of pollutants into the San Joaquin  
22 River and its tributaries and requiring Defendants to comply with the requirements of the General  
23 Permit are germane to its purposes. Litigation of the claims asserted and relief requested in this  
24 Complaint does not require the participation in this lawsuit of individual members of CSPA.

25 8. Members of CSPA reside in and around Mormon Slough, the Stockton Deep Water  
26 Ship Channel, the San Joaquin River, and the Sacramento-San Joaquin Delta and enjoy using those  
27 waters for recreation and other activities. One or more members of CSPA use and enjoy the waters  
28

1 into which Defendants have caused, are causing, and will continue to cause, pollutants to be  
2 discharged. One or more members of CSPA use those areas to fish, sail, boat, kayak, swim, bird  
3 watch, view wildlife and engage in scientific study including monitoring activities, among other  
4 things. Defendants' discharges of pollutants threaten or impair each of those uses or contribute to  
5 such threats and impairments. Thus, the interests of one or more of CSPA's members have been, are  
6 being, and will continue to be adversely affected by Defendants' failure to comply with the Clean  
7 Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused by  
8 Defendants' activities.

9       9. Continuing commission of the acts and omissions alleged above will irreparably harm  
10 Plaintiff and one or more of its members, for which harm they have no plain, speedy or adequate  
11 remedy at law.

12       10. Defendant MASONITE CORPORATION ("Masonite") is a corporation that operates  
13 the Masonite Facility that is at issue in this action.

14       11. Defendant SIERRA LUMBER MANUFACTURERS ("Sierra Lumber") is a  
15 corporation that operates the Sierra Lumber Facility that is at issue in this action. Sierra Lumber is a  
16 wholly owned subsidiary of Masonite.

17 **IV. STATUTORY BACKGROUND**

18       12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
19 pollutant into waters of the United States, unless such discharge is in compliance with various  
20 enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not  
21 authorized by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402 of  
22 the Act, 33 U.S.C. § 1342.

23       13. Section 402(p) of the Act establishes a framework for regulating municipal and  
24 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States with  
25 approved NPDES permit programs are authorized by Section 402(p) to regulate industrial storm  
26 water discharges through individual permits issued to dischargers or through the issuance of a single,  
27 statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

1 14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the U.S.  
2 EPA has authorized California's State Board to issue NPDES permits including general NPDES  
3 permits in California.

4 **General Permit**

5 15. The State Board elected to issue a statewide general permit for industrial storm water  
6 discharges. The State Board originally issued the General Permit on or about November 19, 1991.  
7 The State Board modified the General Permit on or about September 17, 1992. Pertinent to this  
8 action, the State Board reissued the General Permit on or about April 17, 1997 (the "1997 Permit"),  
9 and again on or about April 1, 2014 (the "2015 Permit"), pursuant to Section 402(p) of the Clean  
10 Water Act, 33 U.S.C. § 1342(p). The 1997 Permit was in effect between 1997 and June 30, 2015.  
11 The 2015 Permit went into effect on July 1, 2015. The 2015 Permit maintains or makes more  
12 stringent the same requirements as the 1997 Permit.

13 16. In order to discharge storm water lawfully in California, industrial dischargers must  
14 comply with the terms of the General Permit or have obtained and complied with an individual  
15 NPDES permit. 33 U.S.C. § 1311(a).

16 17. The General Permit contains several prohibitions. Effluent Limitation B(3) of the  
17 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require dischargers to reduce or  
18 prevent pollutants in their storm water discharges through implementation of the Best Available  
19 Technology Economically Achievable ("BAT") for toxic and nonconventional pollutants and the  
20 Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. Discharge  
21 Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit  
22 storm water discharges and authorized non-storm water discharges that cause or threaten to cause  
23 pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the 1997 Permit and  
24 Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges to any surface  
25 or ground water that adversely impact human health or the environment. Receiving Water  
26 Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge  
27 Prohibition III(D) of the 2015 Permit prohibit storm water discharges that cause or contribute to an  
28

1 exceedance of any applicable water quality standards contained in Statewide Water Quality Control  
2 Plan or the applicable Regional Board's Basin Plan.

3 18. In addition to absolute prohibitions, the General Permit contains a variety of  
4 substantive and procedural requirements that dischargers must meet. Facilities discharging, or  
5 having the potential to discharge, storm water associated with industrial activity that have not  
6 obtained an individual NPDES permit must apply for coverage under the State's General Permit by  
7 filing a Notice of Intent to Comply ("NOI"). Dischargers have been required to file NOIs since  
8 March 30, 1992.

9 19. Dischargers must develop and implement a Storm Water Pollution Prevention Plan  
10 ("SWPPP"). The SWPPP must describe storm water control facilities and measures that comply  
11 with the BAT and BCT standards. The General Permit requires that an initial SWPPP has been  
12 developed and implemented before October 1, 1992. The objective of the SWPPP requirement is to  
13 identify and evaluate sources of pollutants associated with industrial activities that may affect the  
14 quality of storm water discharges and authorized non-stormwater discharges from the facility, and to  
15 implement best management practices ("BMPs") to reduce or prevent pollutants associated with  
16 industrial activities in storm water discharges and authorized non-storm water discharges. *See* 1997  
17 Permit, § A(2); 2015 Permit, § X(C). These BMPs must achieve compliance with the General  
18 Permit's effluent limitations and receiving water limitations, including the BAT and BCT  
19 technology mandates. To ensure compliance with the General Permit, the SWPPP must be  
20 evaluated and revised as necessary. 1997 Permit, §§ A(9), (10); 2015 Permit, § X(B). Failure to  
21 develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a  
22 violation of the General Permit. 2015 Permit, Fact Sheet § I(1).

23 20. Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP.  
24 Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list  
25 of significant materials handled and stored at the site; a description of potential pollutant sources; an  
26 assessment of potential pollutant sources; and a description of the BMPs to be implemented at the  
27 facility that will reduce or prevent pollutants in storm water discharges and authorized non-  
28

1 stormwater discharges, including structural BMPs where non-structural BMPs are not effective.  
 2 Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the  
 3 1997 Permit, except that all dischargers are now required to develop and implement a set of  
 4 minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as  
 5 the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving  
 6 water limitations. See 2015 Permit, § X(H). The 2015 Permit further requires a more  
 7 comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP  
 8 descriptions; and an additional BMP summary table identifying each identified area of industrial  
 9 activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being  
 10 implemented. See 2015 Permit, §§ X(G)(2), (4), (5).

11 21. The 2015 Permit requires dischargers to implement and maintain, to the extent  
 12 feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial  
 13 storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and  
 14 response, material handling and waste management, erosion and sediment controls, an employee  
 15 training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to  
 16 implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit, Fact  
 17 Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the  
 18 extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent  
 19 discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm  
 20 water containment and discharge reduction BMPs, treatment control BMPs, and other advanced  
 21 BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve  
 22 compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.*  
 23 The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary  
 24 Table. See 2015 Permit, § X(H)(4), (5).

25 22. The General Permit requires dischargers to develop and implement an adequate  
 26 written Monitoring and Reporting Program. The primary objective of the Monitoring and Reporting  
 27 Program is to detect and measure the concentrations of pollutants in a facility's discharge to ensure  
 28

1 compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving  
 2 water limitations. As part of their monitoring program, dischargers must identify all storm water  
 3 discharge locations that produce a significant storm water discharge, evaluate the effectiveness of  
 4 BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the  
 5 SWPPP are adequate and properly implemented. The 1997 Permit required dischargers to collect  
 6 storm water samples during the first hour of discharge from the first storm event of the wet season,  
 7 and at least one other storm event during the wet season, from all storm water discharge locations at  
 8 a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample  
 9 *four* (rather than two) storm water discharges from all discharge locations over the course of the  
 10 reporting year. *See* 2015 Permit, §§ XI(B)(2), (3).

11 23. Facilities are required to make monthly visual observations of storm water  
 12 discharges. The visual observations must represent the quality and quantity of the facility's storm  
 13 water discharges from the storm event. 1997 Permit, § B(7); 2015 Permit, § XI.A.

14 24. Section XI(B)(2) of the 2015 Permit requires that dischargers collect and analyze  
 15 storm water samples from two qualifying storm events ("QSEs") during the first half of each  
 16 reporting year (July 1 to December 31) and two QSEs during the second half of each reporting year  
 17 (January 1 to June 30).

18 25. Under the 1997 Permit, facilities must analyze storm water samples for "toxic  
 19 chemicals and other pollutants that are likely to be present in storm water discharges in significant  
 20 quantities." 1997 Permit, § B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water  
 21 samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that  
 22 serve as indicators of the presence of all industrial pollutants identified in the pollutant source  
 23 assessment." 2015 Permit, § XI(B)(6)(c).

24 26. Section B(14) of the 1997 Permit requires dischargers to include laboratory reports  
 25 with their Annual Reports submitted to the Regional Board. This requirement is continued with the  
 26 2015 Permit. Fact Sheet, Paragraph O.

27 27. The 1997 Permit, in relevant part, requires that the Annual Report include an Annual  
 28



1 Comprehensive Site Compliance Evaluation Report (“ACSCE Report”). 1997 Permit, § B(14). As  
 2 part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to  
 3 determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report  
 4 must be signed and certified by a duly authorized representative, under penalty of law that the  
 5 information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015  
 6 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation  
 7 (“Annual Evaluation”) that evaluates the effectiveness of current BMPs and the need for additional  
 8 BMPs based on visual observations and sampling and analysis results. *See* 2015 Permit, § XV.

9 28. The General Permit does not provide for any mixing zones by dischargers. The  
 10 General Permit does not provide for any receiving water dilution credits to be applied by  
 11 dischargers.

12 **Basin Plan**

13 29. The Regional Board has identified beneficial uses of the Central Valley Region’s  
 14 waters and established water quality standards for the San Joaquin River and its tributaries and the  
 15 Sacramento-San Joaquin Delta in “The Water Quality Control Plan (Basin Plan) for the California  
 16 Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and  
 17 The San Joaquin River Basin,” generally referred to as the Basin Plan and the “Water Quality  
 18 Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.”

19 30. The beneficial uses of these waters include, among others, domestic and municipal  
 20 supply, water contact recreation, non-contact water recreation, wildlife habitat, warm and cold  
 21 freshwater habitat, and fish spawning. The non-contact water recreation use is defined as “[u]ses of  
 22 water for recreational activities involving proximity to water, but where there is generally no body  
 23 contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited  
 24 to, picnicking, sunbathing, hiking, camping, boating. . . hunting, sightseeing, or aesthetic enjoyment  
 25 in conjunction with the above activities.”

26 31. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters  
 27 shall be maintained free of toxic substances in concentrations that produce detrimental physiological  
 28

1 responses in human, plant, animal, or aquatic life.”

2 32. The Basin Plan provides that “[w]ater shall not contain floating material in amounts  
3 that cause nuisance or adversely affect beneficial uses.”

4 33. The Basin Plan provides that “[w]ater shall be free of discoloration that causes  
5 nuisance or adversely affects beneficial uses.”

6 34. The Basin Plan provides that “[w]aters shall not contain suspended materials in  
7 concentrations that cause nuisance or adversely affect beneficial uses.”

8 35. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters  
9 shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result  
10 in a visible film or coating on the surface of the water or on objects in the water, or otherwise  
11 adversely affect beneficial uses.”

12 36. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised  
13 above 8.5.

14 37. The Basin Plan requires that “[w]aters shall be free of changes in turbidity that cause  
15 nuisance or adversely affect beneficial uses.”

16 38. Table III-1 of the Basin Plan provides a water quality objective (“WQO”) for iron of  
17 0.3 mg/L and for zinc of 0.1 mg/L.

18 39. The California Toxics Rule (California Enclosed Bays & Estuaries) sets a freshwater  
19 numeric water quality standard for zinc of 0.12 mg/L (Criteria Maximum Concentration – “CMC”)  
20 at a hardness of 100 mg/L  $\text{CaCO}_3$ .

21 40. EPA has established Parameter Benchmark Values as guidelines for determining  
22 whether a facility discharging industrial storm water has implemented the requisite BAT and BCT.  
23 These benchmarks represent pollutant concentrations at which a storm water discharge could  
24 potentially impair, or contribute to impairing, water quality, or affect human health from ingestion of  
25 water or fish. The following EPA benchmarks have been established for pollution parameters  
26 applicable to the facilities at issue in this action: pH – 6.0 - 9.0 standard units (“s.u.”); total  
27 suspended solids (“TSS”) – 100 mg/L; oil & grease (“O&G”) – 15 mg/L; iron – 1.0 mg/L; zinc –  
28

1 0.26 mg/L; and chemical oxygen demand ("COD") – 120 mg/L.

2 41. These benchmarks are reflected in the 2015 Permit in the form of Numeric Action  
3 Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 MSGP  
4 benchmark values, and instantaneous maximum NALs, which are derived from a Water Board  
5 dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L;  
6 iron – 1.0 mg/L; zinc – 0.26 mg/L; O&G – 15 mg/L; and COD – 120 mg/L. An exceedance of  
7 annual NALs occurs when the average of all samples obtained for an entire facility during a single  
8 reporting year is greater than a particular annual NAL. The reporting year runs from July 1 to June  
9 30. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0  
10 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L. An instantaneous maximum NAL exceedance occurs  
11 when two or more analytical results from samples taken for any single parameter within a reporting  
12 year exceed the instantaneous maximum NAL value (for TSS and O&G) or are outside of the  
13 instantaneous maximum NAL range for pH. When a discharger exceeds an applicable NAL, it is  
14 elevated to "Level 1 Status," which requires a revision of the SWPPP and additional BMPs. If a  
15 discharger exceeds an applicable NAL during Level 1 Status, it is then elevated to "Level 2 Status."  
16 For Level 2 Status, a discharger is required to submit an Action Plan requiring a demonstration of  
17 either additional BMPs to prevent exceedances, a determination that the exceedance is solely due to  
18 non-industrial pollutant sources, or a determination that the exceedance is solely due to the presence  
19 of the pollutant in the natural background.

20 42. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement  
21 actions against any "person," including individuals, corporations, or partnerships, for violations of  
22 NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive  
23 relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an  
24 assessment of civil penalties of up to \$37,500 per day per violation, pursuant to Sections 309(d) and  
25 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

## 26 **V. STATEMENT OF FACTS**

### 27 **Violations at Masonite Facility**

1           43. Defendant Masonite owns and/or operates the Masonite Facility, a 350,399 square-  
2 foot industrial site located within the City of Stockton.

3           44. The Masonite Facility falls within Standard Industrial Classification ("SIC") Code  
4 2431 ("millwork").

5           45. Based on CSPA's investigation, including a review of the Masonite Facility's Notice  
6 of Intent to Comply with the Terms of the Industrial General Permit ("NOI"), SWPPP, aerial  
7 photography, and CSPA's information and belief, storm water is collected and discharged from the  
8 Masonite Facility through a series of channels that discharge via at least four outfalls. The outfalls  
9 discharge to channels that flow into the City of Stockton's Municipal Separate Storm Sewer System  
10 ("MS4"), which discharges to Mormon Slough, which flows into the Stockton Deep Water Ship  
11 Channel ("DWSC") and then into the San Joaquin River, all of which also comprise portions of the  
12 Sacramento-San Joaquin Delta ("Delta").

13           46. Plaintiff is informed and believes, and thereupon alleges that the storm water flows  
14 over the surface of the Masonite Facility's industrial features, collecting suspended sediment, dirt,  
15 metals, and other pollutants as it flows towards the storm water channels. Storm water and any  
16 pollutants contained in that storm water at the Masonite Facility and is ultimately discharged by the  
17 Masonite Facility to channels that flow to the City of Stockton's MS4, which discharges to Mormon  
18 Slough, which flows into the DWSC and then into the San Joaquin River.

19           47. On information and belief, Plaintiff alleges that the majority of storm water  
20 discharges from the Masonite Facility contain storm water that is commingled with runoff from  
21 areas at the Masonite Facility where industrial processes occur.

22           48. Plaintiff is informed and believes, and thereupon alleges, that the management  
23 practices at the Masonite Facility are currently inadequate to prevent the sources of contamination  
24 described above from causing the discharge of pollutants to waters of the United States. The  
25 Masonite Facility lacks sufficient structural controls such as grading, berming, roofing, containment,  
26 or drainage structures to prevent rainfall and storm water flows from coming into contact with  
27 exposed areas of contaminants. The Masonite Facility lacks sufficient structural controls to prevent  
28

1 the discharge of water once contaminated. The Masonite Facility lacks adequate storm water  
2 pollution treatment technologies to treat storm water once contaminated.

3 49. Since at least November 11, 2011, Masonite has taken samples or arranged for  
4 samples to be taken of storm water discharges at the Masonite Facility. The sample results were  
5 reported in the Masonite Facility's Annual Reports submitted to the Regional Board. Masonite  
6 certified each of those Annual Reports pursuant to the General Permit.

7 50. In Annual Reports and storm water sampling results from the Masonite Facility  
8 submitted to the Regional Board for the past five years, Masonite has consistently reported  
9 extremely high pollutant levels from its storm water sampling results. Measurements of TSS from  
10 the Masonite Facility have been particularly elevated, with readings *orders of magnitude* above  
11 EPA's benchmark levels as well as the annual NALs for those pollutants.

12 51. Masonite has reported numerous discharges from the Masonite Facility in excess of  
13 narrative and numeric water quality standards established in the Basin Plan. These observations  
14 have thus violated narrative and numeric water quality standards established in the Basin Plan and  
15 have thus violated Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the  
16 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A) and  
17 VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the  
18 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

19 52. Masonite has observed discharges from the Masonite Facility with conditions that  
20 violate the narrative water quality standards for discoloration, turbidity, floating materials, sheen,  
21 and suspended materials contained in the Basin Plan. Specific dates on which Masonite has  
22 observed storm water discharges with such violations are contained in the Notice Letter attached as  
23 Exhibit A.  
24

25 53. The levels of TSS in storm water discharged from the Masonite Facility have  
26 exceeded the benchmark value and annual NAL for TSS of 100 mg/L established by EPA and the  
27 State Board, respectively, and the instantaneous NAL value for TSS of 400 mg/L established by the  
28 State Board. For example, on November 24, 2015, the level of TSS measured by Masonite at one of

1 its outfalls was 7,430 mg/L. That level of TSS is over 70 times the benchmark value and annual  
2 NAL for TSS. Specific dates on which Masonite has measured such exceedances, and the levels and  
3 locations of such exceedances, are contained in the Notice Letter attached as Exhibit A.

4 54. The levels of iron in storm water discharged from the Masonite Facility have  
5 exceeded the WQO established by the Basin Plan of 0.3 mg/L for iron. For example, on November  
6 24, 2015, the level of iron measured from one of the Masonite Facility's storm water outfalls was  
7 180 mg/L. That level of iron is 600 times the WQO for iron. Specific dates, levels, and location on  
8 which Masonite has measured such exceedances of the WQO for iron are contained in the Notice  
9 Letter attached as Exhibit A.

10 55. The levels of iron in storm water discharged from the Masonite Facility have  
11 exceeded the benchmark value and annual NAL for iron of 1 mg/L established by EPA and the State  
12 Board, respectively. For example, on November 24, 2015, the level of iron measured by Masonite at  
13 its outfall was 180 mg/L. That level of iron is 180 times the benchmark value and annual NAL for  
14 iron. Specific dates on which Masonite has measured such exceedances of iron, and the levels and  
15 locations of such exceedances, are contained in the Notice Letter attached as Exhibit A.

16 56. The levels of pH in storm water discharged from the Masonite Facility have been  
17 outside the acceptable range of 6.5 – 8.5 established by the Basin Plan for pH. For example, on  
18 November 2, 2015, the level of pH measured from one of the Masonite Facility's storm water  
19 outfalls was 9.27. Specific dates, levels, and location on which Masonite has measured such levels  
20 of pH outside of the established range are contained in the Notice Letter attached as Exhibit A.

21 57. The levels of pH in storm water discharged from the Masonite Facility has exceeded  
22 the benchmark value and instantaneous NAL for pH of 6.0 – 6.0, established by EPA and the State  
23 Board, respectively. On November 2, 2015, the level of pH measured by Masonite at one of its  
24 outfalls was 9.27.

25 58. The level of O&G in storm water discharged from the Masonite Facility has exceeded  
26 the benchmark value and annual NAL for O&G of 15 mg/L established by EPA and the State Board,  
27 respectively. In addition, the level has exceeded the instantaneous NAL for O&G of 25 mg/L. On  
28

1 November 2, 2015, the level of O&G measured by Masonite at one of its outfalls was 29 mg/L.

2 59. The levels of COD in storm water discharged from the Masonite Facility have  
3 exceeded the benchmark value and annual NAL for COD of 120 mg/L established by EPA and the  
4 State Board, respectively. For example, on November 24, 2015, the level of iron measured by  
5 Masonite at its outfall was 1,600 mg/L. That level of COD is over 13 times the benchmark value  
6 and annual NAL for COD. The level of COD has been in excess of 120 mg/L nearly every time that  
7 Masonite has analyzed its storm water discharges for it. Specific dates on which Masonite has  
8 measured such exceedances of COD, and the levels and locations of such exceedances, are contained  
9 in the Notice Letter attached as Exhibit A.

10 60. In its current SWPPP, Masonite indicates that the Masonite Facility has four storm  
11 water discharge outfalls. However, on information and belief, CSPA alleges that during the 2011-  
12 2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons, the Masonite Facility only collected and  
13 analyzed storm water discharges from one outfall at the Masonite Facility, and failed to collect and  
14 analyze discharges from its other outfalls.

15 61. On information and belief, CSPA alleges that during the 2013-2014 wet season,  
16 Masonite failed to collect and analyze storm water samples from a second storm event. On  
17 information and belief, CSPA alleges that storm water discharges occurred at the Masonite Facility  
18 on the following dates: November 19, 2013; December 6, 2013; February 26, 2014; and April 25,  
19 2014.

20 62. On information and belief, CSPA alleges that Masonite failed to conduct monthly  
21 visual observations of storm water discharges during numerous months during the past five years.  
22 On information and belief, based on precipitation data compared to the dates in which the Masonite  
23 Facility did conduct monthly visual observation of storm water discharges, CSPA alleges that  
24 Masonite failed to conduct monthly visual observations of storm water discharges at Outfall 1 during  
25 the following months: November 2013, December 2013, February 2014, and April 2014.

26 63. On information and belief, CSPA alleges that during the past five years, Masonite has  
27 not performed any required monthly visual observations at any of its outfalls besides Outfall 1.  
28

1           64. On information and belief, CSPA alleges that iron is a pollutant likely to be present in  
2 Masonite's storm water discharges in significant quantities. CSPA alleges that with the exception of  
3 three samples during the 2015-2016 reporting year, Masonite has never otherwise analyzed its storm  
4 water discharges for iron.

5           65. On information and belief, CSPA alleges that Masonite has consistently failed to  
6 comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit, by failing to  
7 complete a proper ACSCE Report as well as an Annual Evaluation for the Masonite Facility.

8           66. On information and belief, Plaintiff alleges that since at least June 4, 2011, Masonite  
9 has failed to implement BAT and BCT at the Masonite Facility for its discharges of pH, iron, TSS,  
10 O&G, COD and other potentially un-monitored pollutants. Effluent Limitation B(3) of the 1997  
11 Permit and Effluent Limitation V(A) of the 2015 Permit requires that Masonite implement BAT for  
12 toxic and nonconventional pollutants and BCT for conventional pollutants by no later than October  
13 1, 1992. As of the date of this Complaint, Masonite has failed to implement BAT and BCT.

14           67. On information and belief, Plaintiff alleges that since at least June 4, 2011, Masonite  
15 has failed to implement an adequate SWPPP for the Masonite Facility. Plaintiff is informed and  
16 believes, and thereupon alleges, that the SWPPP prepared for the Masonite Facility does not set forth  
17 site-specific best management practices for the Masonite Facility that are consistent with BAT or  
18 BCT for the Masonite Facility. Plaintiff is informed and believes, and thereupon alleges, that the  
19 SWPPP prepared for the Masonite Facility does not comply with the requirements of Section  
20 X(H)(2) of the 2015 Permit. The SWPPP also fails to identify and implement advanced BMPs that  
21 are not being implemented at the Masonite Facility because they do not reflect best industry practice  
22 considering BAT/BCT. According to information available to CSPA, Masonite's SWPPP has not  
23 been evaluated to ensure its effectiveness and revised where necessary to further reduce pollutant  
24 discharges. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP does not  
25 include each of the mandatory elements required by the General Permit.

26           68. Information available to CSPA indicates that as a result of these practices, Masonite  
27 is discharging storm water containing excessive pollutants during rain events to the City of  
28



1 Stockton's MS4, which discharges to Mormon Slough, which flows into the DWSC and then into  
2 the San Joaquin River.

3 69. Plaintiff is informed and believes, and thereupon alleges, that Masonite has failed and  
4 continues to fail to alter the Masonite Facility's SWPPP and site-specific BMPs consistent with the  
5 General Permit.

6 70. Information available to Plaintiff indicates that Masonite has not fulfilled the  
7 requirements set forth in the General Permit for discharges from the Masonite Facility due to the  
8 continued discharge of contaminated storm water. Plaintiff is informed and believes, and thereupon  
9 alleges, that all of the violations alleged in this Complaint are ongoing and continuing.

10 **Violations at Sierra Lumber Facility**

11 71. Defendant Sierra Lumber owns and/or operates the Sierra Lumber Facility, a 7.6 acre  
12 industrial site located within the City of Stockton.

13 72. The Sierra Lumber Facility falls within Standard Industrial Classification SIC Code  
14 2431 ("millwork").

15 73. Based on CSPA's investigation, including a review of the Sierra Lumber Facility's  
16 NOI, SWPPP, aerial photography, and CSPA's information and belief, storm water is collected and  
17 discharged from the Sierra Lumber Facility through a series of channels that discharge via at least  
18 four outfalls. The outfalls discharge to channels that flow into the City of Stockton's MS4, which  
19 discharges to Mormon Slough, which flows into the DWSC and then into the San Joaquin River, all  
20 of which also comprise portions of the Delta.

21 74. Plaintiff is informed and believes, and thereupon alleges that the storm water flows  
22 over the surface of the Sierra Lumber Facility's industrial features, collecting suspended sediment,  
23 dirt, metals, and other pollutants as it flows towards the storm water channels. Storm water and any  
24 pollutants contained in that storm water at the Sierra Lumber Facility and is ultimately discharged by  
25 the Sierra Lumber Facility to channels that flow to the City of Stockton's MS4, which discharges to  
26 Mormon Slough, which flows into the DWSC and then into the San Joaquin River.

27 75. On information and belief, Plaintiff alleges that the majority of storm water  
28

1 discharges from the Sierra Lumber Facility contain storm water that is commingled with runoff from  
2 areas at the Sierra Lumber Facility where industrial processes occur.

3 76. Plaintiff is informed and believes, and thereupon alleges, that the management  
4 practices at the Sierra Lumber Facility are currently inadequate to prevent the sources of  
5 contamination described above from causing the discharge of pollutants to waters of the United  
6 States. The Sierra Lumber Facility lacks sufficient structural controls such as grading, berming,  
7 roofing, containment, or drainage structures to prevent rainfall and storm water flows from coming  
8 into contact with exposed areas of contaminants. The Sierra Lumber Facility lacks sufficient  
9 structural controls to prevent the discharge of water once contaminated. The Sierra Lumber Facility  
10 lacks adequate storm water pollution treatment technologies to treat storm water once contaminated.

11 77. Since at least November 11, 2011, Sierra Lumber has taken samples or arranged for  
12 samples to be taken of storm water discharges at the Sierra Lumber Facility. The sample results  
13 were reported in the Sierra Lumber Facility's Annual Reports submitted to the Regional Board.  
14 Sierra Lumber certified each of those Annual Reports pursuant to the General Permit.

15 78. In Annual Reports and storm water sampling results submitted to the Regional Board  
16 for the past five years, Sierra Lumber has consistently reported high pollutant levels from its storm  
17 water sampling results from the Sierra Lumber Facility.

18 79. Sierra Lumber has reported observations or measurements of numerous discharges  
19 from the Sierra Lumber Facility with water quality in excess of narrative and numeric water quality  
20 standards established in the Basin Plan. These observed or measured discharges have thus violated  
21 narrative and numeric water quality standards established in the Basin Plan and have thus violated  
22 Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit;  
23 Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A) and VI(B) of the  
24 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit  
25 and Effluent Limitation V(A) of the 2015 Permit.

26 80. Sierra Lumber has observed discharges from the Sierra Lumber Facility with  
27 conditions that violate the narrative water quality standards for discoloration, turbidity, floating  
28

1 materials, and suspended materials contained in the Basin Plan. Specific dates on which Sierra  
2 Lumber has observed storm water discharges with such violations are contained in the Notice Letter  
3 attached as Exhibit B.

4 81. The levels of TSS in storm water discharged from the Sierra Lumber Facility have  
5 exceeded the benchmark value and annual NAL for TSS of 100 mg/L established by EPA and the  
6 State Board, respectively. For example, on December 3, 2015, the level of TSS measured by Sierra  
7 Lumber at one of its outfalls was 1,940 mg/L. That level of TSS is almost 20 times the benchmark  
8 value and annual NAL for TSS. Specific dates on which Sierra Lumber has measured such  
9 exceedances, and the levels and locations of such exceedances, are contained in the Notice Letter  
10 attached as Exhibit B.

11 82. The levels of pH in storm water discharged from the Sierra Lumber Facility have  
12 been outside the acceptable range of 6.5 – 8.5 established by the Basin Plan for pH. For example, on  
13 November 24, 2015, the level of pH measured from one of the Sierra Lumber Facility's storm water  
14 outfalls was 9.03. Specific dates, levels, and location on which Sierra Lumber has measured such  
15 levels of pH outside of the established range are contained in the Notice Letter attached as Exhibit B.

16 83. The levels of pH in storm water discharged from the Sierra Lumber Facility has  
17 exceeded the benchmark value and instantaneous NAL for pH of 6.0 – 6.0, established by EPA and  
18 the State Board, respectively. On November 24, 2015, the level of pH measured by Sierra Lumber  
19 at one of its outfalls was 9.03.

20 84. The levels of COD in storm water discharged from the Sierra Lumber Facility have  
21 exceeded the benchmark value and annual NAL for COD of 120 mg/L established by EPA and the  
22 State Board, respectively. For example, on March 4, 2016, the level of COD measured by Sierra  
23 Lumber at its outfall was 220 mg/L. That level of COD is nearly twice the benchmark value and  
24 annual NAL for COD. Specific dates on which Sierra Lumber has measured such exceedances of  
25 COD, and the levels and locations of such exceedances, are contained in the Notice Letter attached  
26 as Exhibit B.

27 85. On information and belief, CSPA alleges that during the 2013-2014 wet season,  
28

1 Sierra Lumber failed to collect and analyze storm water samples from a second storm event. On  
2 information and belief, CSPA alleges that storm water discharges occurred at the Sierra Lumber  
3 Facility on the following dates: November 19, 2013; December 6, 2013; February 26, 2014; and  
4 April 25, 2014.

5 86. On information and belief, CSPA alleges that Sierra Lumber failed to conduct  
6 monthly visual observations of storm water discharges during numerous months during the past five  
7 years. On information and belief, based on precipitation data compared to the dates in which Sierra  
8 Lumber did conduct monthly visual observation of storm water discharges at the Sierra Lumber  
9 Facility, CSPA alleges that Sierra Lumber failed to conduct monthly visual observations of storm  
10 water discharges at Outfall 1 during the following months: November 2013, December 2013,  
11 February 2014, and April 2014.

12 87. On information and belief, CSPA alleges that zinc is a pollutant likely to be present in  
13 Sierra Lumber's storm water discharges in significant quantities. Sierra Lumber monitored its storm  
14 water discharges for zinc through the 2009-2010 wet season. The concentrations of zinc regularly  
15 observed were well in excess of the applicable water quality standards, benchmark value, and annual  
16 NAL for zinc. CSPA alleges that Sierra Lumber has not implemented any BMPs to reduce these  
17 zinc concentrations. On information and belief, CSPA alleges that Sierra Lumber has failed to  
18 analyze any of its storm water discharges from the past five years for zinc.

19 88. On information and belief, CSPA alleges that Sierra Lumber has consistently failed to  
20 comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit, by failing to  
21 complete a proper ACSCE Report as well as an Annual Evaluation for the Sierra Lumber Facility.

22 89. On information and belief, Plaintiff alleges that since at least June 4, 2011, Sierra  
23 Lumber has failed to implement BAT and BCT at the Sierra Lumber Facility for their discharges of  
24 pH, TSS, COD and other potentially un-monitored pollutants. Effluent Limitation B(3) of the 1997  
25 Permit and Effluent Limitation V(A) of the 2015 Permit requires that Sierra Lumber implement  
26 BAT for toxic and nonconventional pollutants and BCT for conventional pollutants by no later than  
27 October 1, 1992. As of the date of this Complaint, Sierra Lumber has failed to implement BAT and  
28

1 BCT.

2 90. On information and belief, Plaintiff alleges that since at least June 4, 2011, Sierra  
3 Lumber has failed to implement an adequate SWPPP for the Sierra Lumber Facility. Plaintiff is  
4 informed and believes, and thereupon alleges, that the SWPPP prepared for the Sierra Lumber  
5 Facility does not set forth site-specific best management practices for the Sierra Lumber Facility that  
6 are consistent with BAT or BCT for the Sierra Lumber Facility. Plaintiff is informed and believes,  
7 and thereupon alleges, that the SWPPP prepared for the Sierra Lumber Facility does not comply with  
8 the requirements of Section X(H)(2) of the 2015 Permit. The SWPPP also fails to identify and  
9 implement advanced BMPs that are not being implemented at the Sierra Lumber Facility because  
10 they do not reflect best industry practice considering BAT/BCT. According to information available  
11 to CSPA, Sierra Lumber's SWPPP has not been evaluated to ensure its effectiveness and revised  
12 where necessary to further reduce pollutant discharges. Plaintiff is informed and believes, and  
13 thereupon alleges, that the SWPPP does not include each of the mandatory elements required by the  
14 General Permit.

15 91. Information available to CSPA indicates that as a result of these practices, storm  
16 water containing excessive pollutants is being discharged during rain events to the City of  
17 Stockton's MS4, which discharges to Mormon Slough, which flows into the DWSC and then into  
18 the San Joaquin River.

19 92. Plaintiff is informed and believes, and thereupon alleges, that Sierra Lumber has failed  
20 and continues to fail to alter the Sierra Lumber Facility's SWPPP and site-specific BMPs consistent  
21 with the General Permit.

22 93. Information available to Plaintiff indicates that Sierra Lumber has not fulfilled the  
23 requirements set forth in the General Permit for discharges from the Sierra Lumber Facility due to  
24 the continued discharge of contaminated storm water. Plaintiff is informed and believes, and  
25 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and continuing.

26 ///

1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

3 **Failure to Implement the Best Available and**  
4 **Best Conventional Treatment Technologies**  
5 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

6 94. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set  
7 forth herein.

8 95. The General Permit's SWPPP requirements and Effluent Limitation B(3) of the 1997  
9 Permit and Effluent Limitation V(A) of the 2015 Permit require dischargers to reduce or prevent  
10 pollutants in their storm water discharges through implementation of BAT for toxic and  
11 nonconventional pollutants and BCT for conventional pollutants. Defendant Masonite and  
12 Defendant Sierra Lumber have failed to implement BAT and BCT at the Masonite Facility and  
13 Sierra Lumber Facility, respectively, for their discharges of pH, iron, TSS, O&G, COD, zinc, and  
14 other potentially un-monitored pollutants in violation of Effluent Limitation B(3) of the 1997 Permit  
15 and Effluent Limitation V(A) of the 2015 Permit.

16 96. Each day since June 4, 2011, that Defendant Masonite and Defendant Sierra Lumber  
17 have failed to develop and implement BAT and BCT in violation of the General Permit is a separate  
18 and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

19 97. Defendant Masonite and Defendant Sierra Lumber have been in violation of the  
20 BAT/BCT requirements every day since June 4, 2011. Defendant Masonite and Defendant Sierra  
21 Lumber continue to be in violation of the BAT/BCT requirements each day that they fail to develop  
22 and fully implement BAT/BCT at the Masonite Facility and Sierra Lumber Facility.

23 **SECOND CAUSE OF ACTION**

24 **Discharges of Contaminated Storm Water**  
25 **in Violation of Permit Conditions and the Act**  
26 **(Violations of 33 U.S.C. §§ 1311, 1342)**

27 98. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set  
28 forth herein.

99. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of

1 the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that  
2 cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1)  
3 of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water  
4 discharges to any surface or ground water that adversely impact human health or the environment.  
5 Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and  
6 Discharge Prohibition III(D) of the 2015 Permit prohibit storm water discharges that cause or  
7 contribute to an exceedance of any applicable water quality standards contained in Statewide Water  
8 Quality Control Plan or the applicable Regional Board's Basin Plan.

9 100. Plaintiff is informed and believes, and thereupon alleges, that since at least June 4,  
10 2011, Defendant Masonite and Defendant Sierra Lumber have been discharging polluted storm water  
11 from the Masonite Facility and Sierra Lumber Facility, respectively, in excess of applicable water  
12 quality standards in violation of Receiving Water Limitation C(2) of the 1997 Permit and Receiving  
13 Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit.

14 101. During every rain event, storm water flows freely over exposed materials, paved  
15 surfaces, equipment, and other accumulated pollutants at the Masonite Facility and Sierra Lumber  
16 Facility, becoming contaminated with pH, iron, zinc, sediment, and other potentially un-monitored  
17 pollutants at levels above applicable water quality standards. The storm water then flows untreated to  
18 the City of Stockton's MS4, which discharges to Mormon Slough, which flows into the DWSC and  
19 then into the San Joaquin River.

20 102. Plaintiff is informed and believes, and thereupon alleges, that these discharges of  
21 contaminated storm water are causing or contributing to the violation of the applicable water quality  
22 standards in a Statewide Water Quality Control Plan and/or the applicable Regional Board's Basin  
23 Plan in violation of Receiving Water Limitation C(2) of the General Permit.

24 103. Plaintiff is informed and believes, and thereupon alleges, that these discharges of  
25 contaminated storm water are adversely affecting human health and the environment in violation of  
26 Receiving Water Limitation C(1) of the General Permit.

27 104. Every day since at least June 4, 2011, that Defendant Masonite and Defendant Sierra  
28

1 Lumber have discharged and continue to discharge polluted storm water from the Masonite Facility  
2 and Sierra Lumber Facility, respectively, in violation of the General Permit is a separate and distinct  
3 violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and  
4 continuous.

5 **THIRD CAUSE OF ACTION**

6 **Failure to Prepare, Implement, Review, and Update**  
7 **an Adequate Storm Water Pollution Prevention Plan**  
8 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

9 105. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set  
10 forth herein.

11 106. The General Permit requires dischargers of storm water associated with industrial  
12 activity to develop and implement an adequate SWPPP no later than October 1, 1992.

13 107. Defendant Masonite and Defendant Sierra Lumber have failed to develop and  
14 implement an adequate SWPPP for the Masonite Facility and Sierra Lumber Facility, respectively.  
15 Defendant Masonite's and Defendant Sierra Lumber's ongoing failure to develop and implement an  
16 adequate SWPPP for the Masonite Facility and Sierra Lumber Facility, respectively is evidenced by,  
17 *inter alia*, Defendant Masonite and Defendant Sierra Lumber's failures to justify each minimum and  
18 advanced BMP not being implemented.

19 108. Defendant Masonite and Defendant Sierra Lumber have failed to update the Masonite  
20 Facility's SWPPP and the Sierra Lumber Facility's SWPPP in response to the analytical results of the  
21 Facility's storm water monitoring.

22 109. Each day since June 4, 2011, that Defendant Masonite and Defendant Sierra Lumber  
23 have failed to develop, implement and update an adequate SWPPP for the Masonite Facility and Sierra  
24 Lumber Facility, respectively, is a separate and distinct violation of the General Permit and Section  
25 301(a) of the Act, 33 U.S.C. § 1311(a).

26 110. Defendant Masonite and Defendant Sierra Lumber have been in violation of the  
27 SWPPP requirements every day since June 4, 2011. Defendant Masonite and Defendant Sierra  
28 Lumber continue to be in violation of the SWPPP requirements each day that they fail to develop and



1 fully implement an adequate SWPPP for the Masonite Facility and Sierra Lumber Facility,  
2 respectively.

3 **FOURTH CAUSE OF ACTION**  
4 **Failure to Develop and Implement an**  
5 **Adequate Monitoring and Reporting Program**  
6 **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

7 111. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set  
8 forth herein.

9 112. The General Permit requires dischargers of storm water associated with industrial  
10 activity to have developed and be implementing a monitoring and reporting program (including,  
11 *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

12 113. Defendant Masonite and Defendant Sierra Lumber have failed to develop and  
13 implement an adequate monitoring and reporting program for the Masonite Facility and Sierra  
14 Lumber Facility, respectively.

15 114. Defendant Masonite's and Defendant Sierra Lumber's ongoing failure to develop and  
16 implement an adequate monitoring and reporting program are evidenced by, *inter alia*, Defendant  
17 Masonite's failure to conduct proper monthly visual observations at the Masonite Facility, sample  
18 storm water discharges from all of the Masonite Facility's outfalls, and analyze all of its storm water  
19 discharges for iron; as well as Defendant Sierra Lumber's failure to conduct proper monthly visual  
20 observations at the Sierra Lumber Facility as well as its failure to analyze all of its storm water  
21 discharges for zinc.

22 115. Each day since June 4, 2011, that Defendant Masonite and Defendant Sierra Lumber  
23 have failed to develop and implement an adequate monitoring and reporting program for the  
24 Masonite Facility and Sierra Lumber Facility, respectively, in violation of the General Permit is a  
25 separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. §  
26 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous  
27 violations of the Act.  
28

**VII. RELIEF REQUESTED**

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- a. Declare Defendant Masonite to have violated and to be in violation of the Act as alleged herein;
- b. Declare Defendant Sierra Lumber to have violated and to be in violation of the Act as alleged herein;
- c. Enjoin Defendant Masonite from discharging polluted storm water from the Masonite Facility unless authorized by the 2015 Permit;
- d. Enjoin Defendant Sierra Lumber from discharging polluted storm water from the Sierra Lumber Facility unless authorized by the 2015 Permit;
- e. Enjoin Defendant Masonite and Defendant Sierra Lumber from further violating the substantive and procedural requirements of the 2015 Permit;
- f. Order Defendant Masonite and Defendant Sierra Lumber to immediately implement storm water pollution control and treatment technologies and measures that are equivalent to BAT or BCT at their respective facilities;
- g. Order Defendant Masonite and Defendant Sierra Lumber to immediately implement storm water pollution control and treatment technologies and measures at their respective facilities that prevent pollutants in the Masonite Facility's and Sierra Lumber Facility's storm water from contributing to violations of any water quality standards;
- h. Order Defendant Masonite and Defendant Sierra Lumber to comply with the Permit's monitoring and reporting requirements, including ordering supplemental monitoring to compensate for past monitoring violations;
- i. Order Defendant Masonite and Defendant Sierra Lumber to prepare SWPPPs consistent with the Permit's requirements and implement procedures to regularly review and update the SWPPPs;
- j. Order Defendant Masonite and Defendant Sierra Lumber to provide Plaintiff with reports documenting the quality and quantity of their discharges to waters of the United States and

1 their efforts to comply with the Act and the Court's orders;

2 k. Order Defendant Masonite and Defendant Sierra Lumber to pay civil penalties of  
3 up to \$37,500 per day per violation for each violation of the Act since July 14, 2011 pursuant to  
4 Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

5 l. Order Defendant Masonite and Defendant Sierra Lumber to take appropriate  
6 actions to restore the quality of waters impaired or adversely affected by their activities;

7 m. Award Plaintiff's costs (including reasonable investigative, attorney, witness,  
8 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

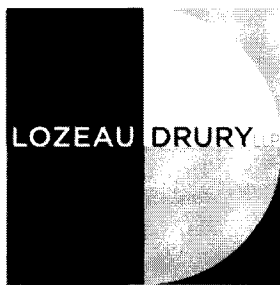
9 n. Award any such other and further relief as this Court may deem appropriate.  
10

11 Dated: August 3, 2016

Respectfully submitted,

12  
13 By: /s/ Douglas J. Chermak  
14 Douglas J. Chermak  
15 LOZEAU DRURY LLP  
16 Attorneys for California Sportfishing Protection  
17 Alliance  
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# EXHIBIT A



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[douglas@lozeaudrury.com](mailto:douglas@lozeaudrury.com)

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

May 23, 2016

Pablo Diaz, Plant Manager  
Mark Valadez, Regional EHS Manager  
Masonite Corporation  
433 W. Scotts Ave.  
Stockton, CA 95203

Frederick J. Lynch, President and CEO  
Masonite  
One Tampa City Center  
201 North Franklin Street  
Suite 300  
Tampa, Florida 33602

**VIA FIRST CLASS MAIL**

Corporate Creations Network, Inc.,  
Registered Agent for Masonite Corporation  
(Entity Number C0150300)  
1430 Truxtun Ave., 5<sup>th</sup> Floor  
Bakersfield, CA 93301

**Re: Notice of Violations and Intent to File Suit under the Federal Water  
Pollution Control Act**

Dear Messrs. Diaz, Valadez, and Lynch:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at Masonite Corporation's industrial facility located at 433 W. Scotts Avenue in Stockton, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Joaquin

Notice of Violations and Intent to File Suit

River, the Sacramento-San Joaquin Delta and other California waters. This letter is being sent to Masonite Corporation, Pablo Diaz, Mark Valadez, and Frederick Lynch as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Masonite").

This letter addresses Masonite's unlawful discharge of pollutants from the Facility into channels that flow into the San Joaquin River and the Sacramento-San Joaquin River Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") is 5S39I013771. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places Masonite on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Masonite under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

In its Notice of Intent to Comply with the Terms of the General Permit ("NOI"), Masonite certifies that the Facility is classified under SIC code 2431. The Facility collects and discharges storm water from its 350,399 square-foot industrial site through at least four outfalls. On information and belief, CSPA alleges the outfall contains storm water that is commingled with runoff from the Facility from the reported 163,093 square-feet of where industrial processes occur. The outfall discharges to channels that flow into the City of Stockton's Municipal Separate Storm Sewer System ("MS4"), which discharges to Mormon Slough, which flows into the Stockton Deep Water Ship Channel ("DWSC") and then into the San Joaquin River, all of which also comprise portions of the Sacramento-San Joaquin Delta ("Delta").

The Regional Board has identified beneficial uses of the Central Valley Region's waters and established water quality standards for the San Joaquin River and its tributaries and the Delta in "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin," generally referred to as the Basin Plan and the "Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary." *See* [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf); [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/wq\\_control\\_plans/2006wqcp/docs/2006\\_plan\\_final.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/wq_control_plans/2006wqcp/docs/2006_plan_final.pdf). The beneficial uses of these waters include, among others, domestic and municipal supply, water contact recreation, non-contact water recreation, wildlife habitat, warm and cold freshwater habitat, and fish spawning. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at II-1.00 – II-2.00. Visible pollution, including cloudy or muddy water from industrial areas, impairs people's use of the San Joaquin River and the Delta for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the San Joaquin River and the Sacramento-San Joaquin Delta. It includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." *Id.* at III-8.01. It provides that "[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses." *Id.* at III-5.00. It provides that "[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses." *Id.* It provides that "[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at III-7.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.* The Basin Plan requires that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." *Id.* at III-9.00.

Table III-1 of the Basin Plan provides a water quality objective ("WQO") for iron of 0.3 mg/L.

The DWSC and the San Joaquin River are impaired for dissolved oxygen.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology

economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).<sup>1</sup> The following benchmarks have been established for pollutants discharged by Masonite: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; iron – 1.0 mg/L; and chemical oxygen demand – 120 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; iron – 1.0 mg/L; and COD – 120 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease (“O&G”) – 25 mg/L.

## **II. Alleged Violations of the NPDES Permit.**

### **A. Discharges in Violation of the Permit**

Masonite has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation

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<sup>1</sup> The Benchmark Values can be found at:  
[http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf).



C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Masonite has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, iron, O&G, and COD in violation of the General Permit. Masonite's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations and measurements of pollutants in excess of applicable numerical and narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

| Date       | Parameter | Observed Concentration/<br>Conditions                  | Basin Plan Water<br>Quality Objective /<br>CTR     | Outfall<br>(as identified by the<br>Facility) |
|------------|-----------|--|--|---|
| 3/11/2016  | pH        | 8.52   | 6.5 – 8.5  | Outfall 1 (Scotts Ave)                        |
| 11/24/2015 | pH        | 8.86   | 6.5 – 8.5  | Outfall 3B (340 Scotts)                       |
| 11/2/2015  | pH        | 8.61   | 6.5 – 8.5  | Outfall 1 (Scotts Ave)                        |
| 11/2/2015  | pH        | 9.27   | 6.5 – 8.5  | Outfall 3B (340 Scotts)                       |
| 2/29/2012  | pH        | 6.2  | 6.5 – 8.5  | SS-1  |
| 3/11/2016  | Iron      | 22 mg/L  | 0.3 mg/L (WQO)                                     | Outfall 3B<br>(Scotts/Monroe)                 |
| 11/24/2015 | Iron      | 180 mg/L   | 0.3 mg/L (WQO)                                     | Outfall 3B (340 Scotts)                       |
| 11/2/2015  | Iron      | 18 mg/L  | 0.3 mg/L (WQO)                                     | Outfall 3B (340 Scotts)                       |
| 4/7/2015   | Narrative | Heavy sediment and<br>bio sheen,<br>particulate matter | Basin Plan at III-7.00 /<br>Basin Plan at III-6.00 | Outfall 1                                     |
| 3/11/2015  | Narrative | Sediment and bio<br>sheen                              | Basin Plan at III-7.00 /<br>Basin Plan at III-6.00 | Outfall 1                                     |
| 12/11/2014 | Narrative | Brown, turbid  | Basin Plan at III-5.00 /<br>Basin Plan at III-9.00 | Outfall 1                                     |
| 11/20/2014 | Narrative | Turbid, light brown                                    | Basin Plan at III-5.00 /<br>Basin Plan at III-9.00 | Outfall 1                                     |

|            |           |  |  |           |
|------------|-----------|--|--|-----------|
| 10/31/2014 | Narrative | Floating wood particulates, sheen, dark/black sediment | Basin Plan at III-5.00 /<br>Basin Plan at III-7.00 /<br>Basin Plan at III-6.00 | Outfall 1 |
|------------|-----------|--|--|-----------|

The information in the above table reflects data gathered from Masonite's self-monitoring during the 2011-2012 and 2014-2015 wet seasons, as well as the 2015-2016 reporting year. CSPA alleges that since at least February 29, 2012, and continuing through today, Masonite has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5
- Iron – 0.3 mg/L (WQO)
- Discoloration – water shall be free of discoloration that causes nuisance or adversely affects beneficial uses. Basin Plan at III-5.00.
- Turbidity – waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Basin Plan at III-9.00.
- Floating materials – water shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses. Basin Plan at III-5.00.
- Sheen – waters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses. Basin Plan at III-6.00.
- Suspended materials – waters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses. Basin Plan at III-7.00.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

| Date      | Parameter              | Observed Concentration | EPA Benchmark Value /Annual NAL | Outfall (as identified by the Facility) |
|-----------|------------------------|------------------------|---------------------------------|---|
| 11/2/2015 | pH                     | 9.27                   | 6.0 – 9.0                       | Outfall 3B (340 Scotts)                 |
| 11/2/2015 | Oil & Grease           | 29 mg/L                | 15 mg/L                         | Outfall 1 (Scotts Ave)                  |
| 3/11/2016 | Total Suspended Solids | 113 mg/L               | 100 mg/L                        | Outfall 1 (Scotts Ave)                  |
| 3/11/2016 | Total Suspended Solids | 572 mg/L               | 100 mg/L                        | Outfall 2 (Van Buren)                   |
| 3/11/2016 | Total Suspended Solids | 570 mg/L               | 100 mg/L                        | Outfall 3B (Scotts/Monroe)              |

|            |                        |            |          |                            |
|------------|------------------------|------------|----------|----------------------------|
| 11/24/2015 | Total Suspended Solids | 107 mg/L   | 100 mg/L | Outfall 1 (Scotts Ave)     |
| 11/24/2015 | Total Suspended Solids | 462 mg/L   | 100 mg/L | Outfall 2 (733 S. Van Bu)  |
| 11/24/2015 | Total Suspended Solids | 433 mg/L   | 100 mg/L | Outfall 3A (340 Scotts)    |
| 11/24/2015 | Total Suspended Solids | 7,430 mg/L | 100 mg/L | Outfall 3B (340 Scotts)    |
| 11/2/2015  | Total Suspended Solids | 319 mg/L   | 100 mg/L | Outfall 1 (Scotts Ave)     |
| 11/2/2015  | Total Suspended Solids | 447 mg/L   | 100 mg/L | Outfall 3B (340 Scotts)    |
| 11/20/2014 | Total Suspended Solids | 123 mg/L   | 100 mg/L | Outfall 1 (Scotts Ave)     |
| 10/31/2014 | Total Suspended Solids | 106 mg/L   | 100 mg/L | Outfall 1 (Scotts Ave)     |
| 10/22/2012 | Total Suspended Solids | 130 mg/L   | 100 mg/L | SS-1                       |
| 3/11/2016  | Iron                   | 22 mg/L    | 1 mg/L   | Outfall 3B (Scotts/Monroe) |
| 11/24/2015 | Iron                   | 180 mg/L   | 1 mg/L   | Outfall 3B (340 Scotts)    |
| 11/2/2015  | Iron                   | 18 mg/L    | 1 mg/L   | Outfall 3B (340 Scotts)    |
| 4/22/2016  | Chemical Oxygen Demand | 140 mg/L   | 120 mg/L | Outfall 1 (Scotts Ave)     |
| 4/22/2016  | Chemical Oxygen Demand | 170 mg/L   | 120 mg/L | Outfall 2 (Van Buren)      |
| 4/22/2016  | Chemical Oxygen Demand | 160 mg/L   | 120 mg/L | Outfall 3A (Scotts/Monroe) |
| 3/11/2016  | Chemical Oxygen Demand | 130 mg/L   | 120 mg/L | Outfall 1 (Scotts Ave)     |
| 3/11/2016  | Chemical Oxygen Demand | 260 mg/L   | 120 mg/L | Outfall 2 (Van Buren)      |
| 3/11/2016  | Chemical Oxygen Demand | 140 mg/L   | 120 mg/L | Outfall 3A (Scotts/Monroe) |
| 3/11/2016  | Chemical Oxygen Demand | 130 mg/L   | 120 mg/L | Outfall 3B (Scotts/Monroe) |
| 11/24/2015 | Chemical Oxygen Demand | 260 mg/L   | 120 mg/L | Outfall 1 (Scotts Ave)     |
| 11/24/2015 | Chemical Oxygen Demand | 180 mg/L   | 120 mg/L | Outfall 2 (733 S. Van Bu)  |
| 11/24/2015 | Chemical Oxygen Demand | 140 mg/L   | 120 mg/L | Outfall 3A (340 Scotts)    |
| 11/24/2015 | Chemical Oxygen Demand | 1,600 mg/L | 120 mg/L | Outfall 3B (340 Scotts)    |
| 11/2/2015  | Chemical Oxygen Demand | 160 mg/L   | 120 mg/L | Outfall 1 (Scotts Ave)     |
| 11/2/2015  | Chemical Oxygen Demand | 160 mg/L   | 120 mg/L | Outfall 2 (733 S. Van Bu)  |

The information in the above table reflects data gathered from Masonite's self-monitoring during the 2012-2013 and 2014-2015 wet seasons and the 2015-2016 reporting year. Further, CSPA notes that the Facility has already exceeded the instantaneous maximum NAL for TSS during the 2015-2016 reporting year. CSPA alleges that since at least October 22, 2012, Masonite has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for pH, TSS, O&G, iron, and COD.

CSPA's investigation, including its review of Masonite's Storm Water Pollution Prevention Plan ("SWPPP"), Masonite's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that Masonite has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, O&G, iron, COD, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Masonite was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Masonite is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since May 23, 2011, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Masonite has discharged storm water containing impermissible and unauthorized levels of pH, TSS, O&G, iron, and COD in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.<sup>2</sup>

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, O&G, iron, COD, and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Masonite is subject to penalties for violations of the General Permit and the Act since May 23, 2011.

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<sup>2</sup> The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Stockton, approximately 4.2 miles from the Facility. The data was accessed via <http://169.237.140.1/calludt.cgi/WXDESCRIPTION?MAP=&STN=STOCKTON.C> (Last accessed on May 23, 2016).

**B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.**

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

**i. Failure to Conduct Sampling and Analysis**

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. See 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. See 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. See 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." See 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

In its current SWPPP, Masonite indicates that the Facility has four storm water discharge outfalls. However, during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons, the Facility only collected and analyzed storm water discharges from one outfall at the Facility, and failed to collect and analyze discharges from all of its other outfalls. This results in at least six violations of the General Permit for each year.

On information and belief, CSPA alleges that during the 2013-2014 wet season, Masonite failed to collect and analyze storm water samples from a second storm event. Despite its claims that there was only one event that produced storm water discharges during that season, CSPA alleges that precipitation data compared to dates when the Facility did collect storm water samples shows that discharges occurred on several dates during each of those wet seasons. Specifically, CSPA alleges that discharges occurred on the following dates:

- November 19, 2013
- December 6, 2013
- February 26, 2014
- April 25, 2014

This results in at least one violation of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Masonite is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least May 23, 2011.

**ii. Failure to Conduct Visual Observations of Storm Water Discharges**

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make monthly visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

On information and belief, CSPA alleges that Masonite failed to conduct monthly visual observations of storm water discharges during numerous months during the past five years. On information and belief, based on precipitation data compared to the dates in which the Facility did conduct monthly visual observation of storm water discharges, CSPA alleges that Masonite failed to conduct monthly visual observations of storm water discharges at Outfall 1 during the following months:

- 2013 – November, December
- 2014 – February, April

In addition, during the past five years, Masonite has not performed any required monthly visual observations at any of its outfalls besides Outfall 1. This results in at least 24 violations of the General Permit for each year. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions

brought pursuant to the federal Clean Water Act, Masonite is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since May 23, 2011.

**iii. Failure to Analyze for Pollutants That May Be Present in Significant Quantities**

Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

Thus far during the 2015-2106, reporting year, Masonite analyzed three of its storm water discharges for iron and found that the concentrations of iron were significantly in excess of the average NAL for iron.

Thus, iron is a pollutant likely to be present in Masonite's storm water discharges in significant quantities. On information and belief, CSPA alleges that Masonite has never otherwise analyzed its storm water discharges for iron. This failure to analyze iron in each sampling event results in at least 16 violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Masonite is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since May 23, 2011.

**C. Failure to Complete Annual Comprehensive Site Compliance Evaluation**

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). (Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CSPA indicates that Masonite has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report

to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Masonite has not proposed any BMPs that properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

CSPA puts Masonite on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Masonite is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Masonite is subject to civil penalties for all violations of the CWA occurring since May 23, 2011.

**D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.**

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve



as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5).

Despite these clear BMP requirements, Masonite has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs. The SWPPP fails to implement and maintain minimum BMPs to minimize or prevent material tracking from the Facility.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Masonite has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

CSPA puts Masonite on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CSPA will include additional violations as information and data become available. Masonite is subject to civil penalties for all violations of the CWA occurring since May 23, 2011.

**III. Persons Responsible for the Violations.**

CSPA puts Masonite Corporation, Pablo Diaz, Mark Valadez, and Frederick Lynch on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Masonite Corporation, Pablo Diaz, Mark Valadez, and Frederick Lynch on notice that it intends to include those persons in this action.

**IV. Name and Address of Noticing Parties.**

The name, address and telephone number of the California Sportfishing Protection Alliance is as follows:

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204  
Tel. (209) 464-5067  
deltakeep@me.com

**V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak  
Michael R. Lozeau  
Lozeau Drury LLP  
410 12th Street, Suite 250  
Oakland, California 94607  
Tel. (510) 836-4200  
doug@lozeaudrury.com  
michael@lozeaudrury.com

**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Masonite to a penalty of up to \$37,500 per day per violation for all violations. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against Masonite and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglas J. Chermak", is written above the typed name.

Douglas J. Chermak  
Lozeau Drury LLP  
Attorneys for California Sportfishing Protection Alliance

**SERVICE LIST – via certified mail**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Loretta Lynch, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Pamela C. Creedon, Executive Officer  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

**ATTACHMENT A**

## Rain Dates, Masonite Corporation, Stockton, CA

|            |            |            |
|------------|------------|------------|
| 5/28/2011  | 1/5/2013   | 12/19/2014 |
| 10/5/2011  | 1/6/2013   | 2/6/2015   |
| 11/19/2011 | 1/24/2013  | 2/7/2015   |
| 11/20/2011 | 2/19/2013  | 2/8/2015   |
| 1/20/2012  | 3/19/2013  | 3/2/2015   |
| 1/21/2012  | 3/30/2013  | 3/11/2015  |
| 1/22/2012  | 3/31/2013  | 3/23/2015  |
| 1/23/2012  | 4/4/2013   | 3/24/2015  |
| 2/7/2012   | 4/7/2013   | 3/25/2015  |
| 2/13/2012  | 9/2/2013   | 4/4/2015   |
| 2/29/2012  | 9/21/2013  | 4/11/2015  |
| 3/13/2012  | 11/19/2013 | 4/15/2015  |
| 3/14/2012  | 11/20/2013 | 4/20/2015  |
| 3/16/2012  | 12/6/2013  | 4/28/2015  |
| 3/17/2012  | 2/2/2014   | 10/25/2015 |
| 3/25/2012  | 2/6/2014   | 10/26/2015 |
| 3/27/2012  | 2/7/2014   | 11/8/2015  |
| 3/28/2012  | 2/8/2014   | 11/10/2015 |
| 3/31/2012  | 2/9/2014   | 11/11/2015 |
| 4/11/2012  | 2/26/2014  | 11/13/2015 |
| 4/12/2012  | 2/28/2014  | 11/17/2015 |
| 4/13/2012  | 3/3/2014   | 11/20/2015 |
| 4/25/2012  | 3/5/2014   | 11/23/2015 |
| 4/26/2012  | 3/26/2014  | 11/24/2015 |
| 10/22/2012 | 3/29/2014  | 11/26/2015 |
| 11/1/2012  | 3/31/2014  | 11/30/2015 |
| 11/9/2012  | 4/1/2014   | 12/8/2015  |
| 11/16/2012 | 4/25/2014  | 12/12/2015 |
| 11/17/2012 | 9/25/2014  | 12/17/2015 |
| 11/18/2012 | 10/31/2014 | 12/19/2015 |
| 11/21/2012 | 11/13/2014 | 12/21/2015 |
| 11/28/2012 | 11/19/2014 | 12/22/2015 |
| 11/30/2012 | 11/20/2014 | 12/23/2015 |
| 12/1/2012  | 11/22/2014 | 12/28/2015 |
| 12/2/2012  | 11/26/2014 | 12/29/2015 |
| 12/5/2012  | 11/29/2014 | 12/30/2015 |
| 12/15/2012 | 11/30/2014 | 12/31/2015 |
| 12/17/2012 | 12/2/2014  | 1/2/2016   |
| 12/21/2012 | 12/11/2014 | 1/3/2016   |
| 12/22/2012 | 12/12/2014 | 1/4/2016   |
| 12/23/2012 | 12/15/2014 | 1/5/2016   |
| 12/25/2012 | 12/16/2014 | 1/16/2016  |

Notice of Violations and Intent to File Suit

**ATTACHMENT A**  
**Rain Dates, Masonite Corporation, Stockton, California**

|           |           |           |
|-----------|-----------|-----------|
| 1/18/2016 | 2/12/2016 | 3/8/2016  |
| 1/19/2016 | 2/13/2016 | 3/10/2016 |
| 1/21/2016 | 2/15/2016 | 3/11/2016 |
| 1/22/2016 | 2/16/2016 | 3/12/2016 |
| 1/23/2016 | 2/17/2016 | 3/13/2016 |
| 1/24/2016 | 2/18/2016 | 3/17/2016 |
| 1/25/2016 | 2/19/2016 | 3/23/2016 |
| 1/27/2016 | 2/20/2016 | 3/24/2016 |
| 1/28/2016 | 2/21/2016 | 3/25/2016 |
| 1/30/2016 | 2/23/2016 | 4/4/2016  |
| 2/3/2016  | 2/28/2016 | 4/11/2016 |
| 2/4/2016  | 2/29/2016 | 4/19/2016 |
| 2/7/2016  | 3/2/2016  | 4/20/2016 |
| 2/8/2016  | 3/3/2016  | 4/28/2016 |
| 2/9/2016  | 3/5/2016  |           |
| 2/11/2016 | 3/6/2016  |           |

# EXHIBIT B



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

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[info@lozeaudrury.com](mailto:info@lozeaudrury.com)

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

May 23, 2016

Richard Wilson, Operations Manager  
Russ Tharp, Plant Manager  
Sierra Lumber Manufacturers  
375 Hazelton Ave.  
Stockton, CA 95203

**Re: Notice of Violations and Intent to File Suit under the Federal Water  
Pollution Control Act**

Dear Messrs. Wilson and Tharp:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at Sierra Lumber Manufacturers' industrial facility located at 375 Hazelton Avenue in Stockton, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Joaquin River, the Sacramento-San Joaquin Delta and other California waters. This letter is being sent to Sierra Lumber Manufacturers, Richard Wilson, and Russ Tharp as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Sierra Lumber").

This letter addresses Sierra Lumber's unlawful discharge of pollutants from the Facility into channels that flow into the San Joaquin River and the Sacramento-San Joaquin River Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") is 5S39I013771. The

Notice of Violations and Intent to File Suit



Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places Sierra Lumber on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Sierra Lumber under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

In its Notice of Intent to Comply with the Terms of the General Permit ("NOI"), Sierra Lumber certifies that the Facility is classified under SIC code 2431. The Facility collects and discharges storm water from its 7.6 acre industrial site through at least four outfalls. On information and belief, CSPA alleges the outfalls contain storm water that is commingled with runoff from the Facility from the reported 5.5 acres of where industrial processes occur. The outfall discharges to channels that flow into the City of Stockton's Municipal Separate Storm Sewer System ("MS4"), which discharges to Mormon Slough, which flows into the Stockton Deep Water Ship Channel ("DWSC") and then into the San Joaquin River, all of which also comprise portions of the Sacramento-San Joaquin Delta ("Delta").

The Regional Board has identified beneficial uses of the Central Valley Region's waters and established water quality standards for the San Joaquin River and its tributaries and the Delta in "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin," generally referred to as the Basin Plan, and the "Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary." *See* [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf); [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/wq\\_control\\_plans/2006wqcp/docs/2006\\_plan\\_final.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/wq_control_plans/2006wqcp/docs/2006_plan_final.pdf). The beneficial uses of these waters include, among others, domestic and municipal supply, water contact recreation, non-contact water recreation, wildlife habitat, warm and cold freshwater habitat, and fish spawning. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at II-1.00 – II-2.00. Visible pollution, including cloudy or muddy water from industrial

areas, impairs people's use of the San Joaquin River and the Delta for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the San Joaquin River and the Sacramento-San Joaquin Delta. It includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." *Id.* at III-8.01. It provides that "[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses." *Id.* at III-5.00. It provides that "[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses." *Id.* It provides that "[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at III-7.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.* The Basin Plan requires that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." *Id.* at III-9.00.

Table III-1 of the Basin Plan provides a water quality objective ("WQO") for zinc of 0.1 mg/L. The California Toxics Rule (California Enclosed Bays & Estuaries) sets a freshwater numeric water quality standard for zinc of 0.12 mg/L (Criteria Maximum Concentration – "CMC") at a hardness of 100 mg/L CaCO<sub>3</sub>.

The DWSC and the San Joaquin River are impaired for dissolved oxygen.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT").<sup>1</sup> The following benchmarks have been established for pollutants discharged by Sierra Lumber: pH – 6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; zinc – 0.26 mg/L; and chemical oxygen demand – 120 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; zinc – 0.26 mg/L; and COD – 120 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease ("O&G") – 25 mg/L.

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<sup>1</sup> The Benchmark Values can be found at:  
[http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf).

## **II. Alleged Violations of the NPDES Permit.**

### **A. Discharges in Violation of the Permit**

Sierra Lumber has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Sierra Lumber has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, and COD in violation of the General Permit. Sierra Lumber's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations and measurements of pollutants in excess of applicable numerical and narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

| Date       | Parameter | Observed Concentration/<br>Conditions | Basin Plan Water Quality Objective / CTR           | Outfall (as identified by the Facility) |
|------------|-----------|---------------------------------------|--|---|
| 3/11/2016  | pH        | 8.78                                  | 6.5 – 8.5  | Outfall 1B                              |
| 11/24/2015 | pH        | 9.03                                  | 6.5 – 8.5  | Outfall 2 (North Drainage)              |
| 10/22/2012 | pH        | 8.68                                  | 6.5 – 8.5  | SS-3                                    |
| 11/11/2011 | pH        | 6.23                                  | 6.5 – 8.5  | SS-1                                    |
| 11/11/2011 | pH        | 6.16                                  | 6.5 – 8.5  | SS-3                                    |
| 3/11/2015  | Narrative | Brown color; Turbid                   | Basin Plan at III-5.00 /<br>Basin Plan at III-9.00 | Outfall 2                               |
| 12/11/2014 | Narrative | Brown; Turbid                         | Basin Plan at III-5.00 /<br>Basin Plan at III-9.00 | Outfall 2                               |
| 11/20/2014 | Narrative | Turbid                                | Basin Plan at III-9.00                             | Outfall 1A                              |
| 11/20/2014 | Narrative | Brown color; Turbid                   | Basin Plan at III-5.00 /<br>Basin Plan at III-9.00 | Outfall 2                               |
| 10/31/2014 | Narrative | Dark brown color; Turbid              | Basin Plan at III-5.00 /<br>Basin Plan at III-9.00 | Outfall 2                               |
| 10/31/2014 | Narrative | Dark brown color; Turbid              | Basin Plan at III-5.00 /<br>Basin Plan at III-9.00 | Outfall 1A                              |
| 10/31/2014 | Narrative | Light yellow color                    | Basin Plan at III-5.00                             | Outfall 1B                              |
| 3/26/2014  | Narrative | Cloudy                                | Basin Plan at III-7.00                             | Outfall 2                               |

The information in the above table reflects data gathered from Sierra Lumber's self-monitoring during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons, as well as the 2015-2016 reporting year. CSPA alleges that since at least November 11, 2011, and continuing through today, Sierra Lumber has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5
- Discoloration – water shall be free of discoloration that causes nuisance or adversely affects beneficial uses. Basin Plan at III-5.00.
- Turbidity – waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Basin Plan at III-9.00.

- Floating materials – water shall not contain floating material in amounts that
- Suspended materials – waters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses. Basin Plan at III-7.00.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

| <b>Date</b> | <b>Parameter</b>       | <b>Observed Concentration</b> | <b>EPA Benchmark Value /Annual NAL</b> | <b>Outfall (as identified by the Facility)</b> |
|-------------|------------------------|-------------------------------|--|--|
| 11/2/2015   | pH                     | 9.03                          | 6.0 – 9.0                              | Outfall 2 (North Drainage)                     |
| 3/11/2016   | Total Suspended Solids | 356 mg/L                      | 100 mg/L                               | Outfall 2                                      |
| 3/4/2016    | Total Suspended Solids | 167 mg/L                      | 100 mg/L                               | Outfall 1A                                     |
| 12/3/2015   | Total Suspended Solids | 1940 mg/L                     | 100 mg/L                               | Outfall 2 (North Drainage)                     |
| 11/24/2015  | Total Suspended Solids | 164 mg/L                      | 100 mg/L                               | Outfall 1A (South Drainage)                    |
| 11/24/2015  | Total Suspended Solids | 391 mg/L                      | 100 mg/L                               | Outfall 2 (North Drainage)                     |
| 11/2/2015   | Total Suspended Solids | 122 mg/L                      | 100 mg/L                               | Outfall 1A (South Drainage)                    |
| 10/31/2014  | Total Suspended Solids | 155 mg/L                      | 100 mg/L                               | Outfall 1B (Central Drainage)                  |
| 10/31/2014  | Total Suspended Solids | 459 mg/L                      | 100 mg/L                               | Outfall 2 (North Drainage)                     |
| 3/26/2014   | Total Suspended Solids | 112 mg/L                      | 100 mg/L                               | Outfall 2 (North Drainage)                     |
| 11/28/2012  | Total Suspended Solids | 160 mg/L                      | 100 mg/L                               | SS-1   |
| 11/28/2012  | Total Suspended Solids | 580 mg/L                      | 100 mg/L                               | SS-3   |
| 3/11/2016   | Chemical Oxygen Demand | 170 mg/L                      | 120 mg/L                               | Outfall 2                                      |
| 3/4/2016    | Chemical Oxygen Demand | 220 mg/L                      | 120 mg/L                               | Outfall 1A                                     |
| 12/3/2015   | Chemical Oxygen Demand | 180 mg/L                      | 120 mg/L                               | Outfall 2 (North Drainage)                     |

|            |                        |          |          |                             |
|------------|------------------------|----------|----------|-----------------------------|
| 11/24/2015 | Chemical Oxygen Demand | 130 mg/L | 120 mg/L | Outfall 1A (South Drainage) |
|------------|------------------------|----------|----------|-----------------------------|

The information in the above table reflects data gathered from Sierra Lumber's self-monitoring during the 2012-2013, 2013-2014, and 2014-2015 wet seasons and the 2015-2016 reporting year. CSPA alleges that since at least November 28, 2012, Sierra Lumber has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for pH, TSS, and COD.

CSPA's investigation, including its review of Sierra Lumber's Storm Water Pollution Prevention Plan ("SWPPP"), Sierra Lumber's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that Sierra Lumber has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, COD, and potentially other pollutants, including zinc, in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Sierra Lumber was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Sierra Lumber is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since May 23, 2011, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Sierra Lumber has discharged storm water containing impermissible and unauthorized levels of pH, TSS, and COD in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.<sup>2</sup>

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, COD, and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each

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<sup>2</sup> The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Stockton, approximately 4.2 miles from the Facility. The data was accessed via <http://169.237.140.1/calludt.cgi/WXDESCRIPTION?MAP=&STN=STOCKTON.C> (Last accessed on May 23, 2016).

day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Sierra Lumber is subject to penalties for violations of the General Permit and the Act since May 23, 2011.

**B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.**

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

**i. Failure to Conduct Sampling and Analysis**

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. See 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. See 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. See 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." See 1997 Permit, § B(5)(a). The Facility has violated these monitoring requirements.

On information and belief, CSPA alleges that during the 2013-2014 wet season, Sierra Lumber failed to collect and analyze storm water samples from a second storm event. Despite its

claims that there was only one event that produced storm water discharges during that season, CSPA alleges that precipitation data compared to dates when the Facility did collect storm water samples shows that discharges occurred on several dates during each of those wet seasons. Specifically, CSPA alleges that discharges occurred on the following dates:

- November 19, 2013
- December 6, 2013
- February 26, 2014
- April 25, 2014

This results in at least four violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Sierra Lumber is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least November 19, 2013.

**ii. Failure to Conduct Visual Observations of Storm Water Discharges**

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make monthly visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

On information and belief, CSPA alleges that Sierra Lumber failed to conduct monthly visual observations of storm water discharges during numerous months during the past five years. On information and belief, based on precipitation data compared to the dates in which the Facility did conduct monthly visual observation of storm water discharges, CSPA alleges that Sierra Lumber failed to conduct monthly visual observations of storm water discharges at its three discharge locations during the following months:

- 2013 – November, December
- 2014 – February, April

This results in at least 12 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Sierra Lumber is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least November 30, 2013.

**iii. Failure to Analyze for Pollutants That May Be Present in Significant Quantities**

Notice of Violations and Intent to File Suit



Under the 1997 Permit, facilities must analyze storm water samples for “toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for “[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment.” 2015 Permit, Section XI(B)(6)(c).

On information and belief, CSPA alleges that zinc is likely to be present in significant quantities from industrial storm water discharges from the Facility. Sierra Lumber monitored its storm water discharges for zinc through the 2009-2010 wet season. The concentrations of zinc regularly observed were well in excess of the applicable water quality standards, benchmark value, and annual NAL for zinc. CSPA alleges that Sierra Lumber has not implemented any BMPs to reduce these zinc concentrations.

On information and belief, CSPA alleges that Sierra Lumber has failed to analyze any of its storm water discharges from the past five years for zinc. This failure to analyze zinc in each sampling event results in at least 29 violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Sierra Lumber is subject to penalties for violations of the General Permit and the Act’s monitoring and sampling requirements since May 23, 2011.

### **C. Failure to Complete Annual Comprehensive Site Compliance Evaluation**

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report (“ACSCE Report”). (Section B(14)). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation (“Annual Evaluation”) that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CSPA indicates that Sierra Lumber has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility’s ACSCE Reports provide an explanation of the Facility’s failure to take steps to reduce or prevent high levels of pollutants observed in the Facility’s storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). None of the ACSCE Reports address the discharges of COD or zinc. The

failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Sierra Lumber has not proposed any BMPs that properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

CSPA puts Sierra Lumber on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Sierra Lumber is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Sierra Lumber is subject to civil penalties for all violations of the CWA occurring since May 23, 2011.

**D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.**

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific

BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5).

Despite these clear BMP requirements, Sierra Lumber has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs. The SWPPP fails to implement and maintain minimum BMPs to minimize or prevent material tracking from the Facility.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Sierra Lumber has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

CSPA puts Sierra Lumber on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CSPA will include additional violations as information and data become available. Sierra Lumber is subject to civil penalties for all violations of the CWA occurring since May 23, 2011.

**III. Persons Responsible for the Violations.**

CSPA puts Sierra Lumber Manufacturers, Richard Wilson, and Russ Tharp on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Sierra Lumber Manufacturers, Richard Wilson, and Russ Tharp on notice that it intends to include those persons in this action.

**IV. Name and Address of Noticing Parties.**

The name, address and telephone number of the California Sportfishing Protection Alliance is as follows:

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204  
Tel. (209) 464-5067  
deltakeep@me.com

**V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak  
Michael R. Lozeau  
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**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Sierra Lumber to a penalty of up to \$37,500 per day per violation for all violations. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against Sierra Lumber and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak  
Lozeau Drury LLP  
Attorneys for California Sportfishing Protection Alliance

**SERVICE LIST – via certified mail**

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Thomas Howard, Executive Director  
State Water Resources Control Board  
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**ATTACHMENT A****Rain Dates, Sierra Lumber Manufacturers, Stockton, CA**

|            |            |            |
|------------|------------|------------|
| 5/28/2011  | 1/5/2013   | 12/19/2014 |
| 10/5/2011  | 1/6/2013   | 2/6/2015   |
| 11/19/2011 | 1/24/2013  | 2/7/2015   |
| 11/20/2011 | 2/19/2013  | 2/8/2015   |
| 1/20/2012  | 3/19/2013  | 3/2/2015   |
| 1/21/2012  | 3/30/2013  | 3/11/2015  |
| 1/22/2012  | 3/31/2013  | 3/23/2015  |
| 1/23/2012  | 4/4/2013   | 3/24/2015  |
| 2/7/2012   | 4/7/2013   | 3/25/2015  |
| 2/13/2012  | 9/2/2013   | 4/4/2015   |
| 2/29/2012  | 9/21/2013  | 4/11/2015  |
| 3/13/2012  | 11/19/2013 | 4/19/2015  |
| 3/14/2012  | 11/20/2013 | 4/20/2015  |
| 3/16/2012  | 12/6/2013  | 4/28/2015  |
| 3/17/2012  | 2/2/2014   | 10/25/2015 |
| 3/25/2012  | 2/6/2014   | 10/26/2015 |
| 3/27/2012  | 2/7/2014   | 11/8/2015  |
| 3/28/2012  | 2/8/2014   | 11/10/2015 |
| 3/31/2012  | 2/9/2014   | 11/11/2015 |
| 4/11/2012  | 2/26/2014  | 11/13/2015 |
| 4/12/2012  | 2/28/2014  | 11/17/2015 |
| 4/13/2012  | 3/3/2014   | 11/20/2015 |
| 4/25/2012  | 3/5/2014   | 11/23/2015 |
| 4/26/2012  | 3/26/2014  | 11/24/2015 |
| 10/22/2012 | 3/29/2014  | 11/26/2015 |
| 11/1/2012  | 3/31/2014  | 11/30/2015 |
| 11/9/2012  | 4/1/2014   | 12/8/2015  |
| 11/16/2012 | 4/25/2014  | 12/12/2015 |
| 11/17/2012 | 9/25/2014  | 12/17/2015 |
| 11/18/2012 | 10/31/2014 | 12/19/2015 |
| 11/21/2012 | 11/13/2014 | 12/21/2015 |
| 11/28/2012 | 11/19/2014 | 12/22/2015 |
| 11/30/2012 | 11/20/2014 | 12/23/2015 |
| 12/1/2012  | 11/22/2014 | 12/28/2015 |
| 12/2/2012  | 11/26/2014 | 12/29/2015 |
| 12/5/2012  | 11/29/2014 | 12/30/2015 |
| 12/15/2012 | 11/30/2014 | 12/31/2015 |
| 12/17/2012 | 12/2/2014  | 1/2/2016   |
| 12/21/2012 | 12/11/2014 | 1/3/2016   |
| 12/22/2012 | 12/12/2014 | 1/4/2016   |
| 12/23/2012 | 12/15/2014 | 1/5/2016   |
| 12/25/2012 | 12/16/2014 | 1/16/2016  |

Notice of Violations and Intent to File Suit

**ATTACHMENT A**

**Rain Dates, Sierra Lumber Manufacturers, Stockton, California**

|           |           |           |
|-----------|-----------|-----------|
| 1/18/2016 | 2/12/2016 | 3/8/2016  |
| 1/19/2016 | 2/13/2016 | 3/10/2016 |
| 1/21/2016 | 2/15/2016 | 3/11/2016 |
| 1/22/2016 | 2/16/2016 | 3/12/2016 |
| 1/23/2016 | 2/17/2016 | 3/13/2016 |
| 1/24/2016 | 2/18/2016 | 3/17/2016 |
| 1/25/2016 | 2/19/2016 | 3/23/2016 |
| 1/27/2016 | 2/20/2016 | 3/24/2016 |
| 1/28/2016 | 2/21/2016 | 3/25/2016 |
| 1/30/2016 | 2/23/2016 | 4/4/2016  |
| 2/3/2016  | 2/28/2016 | 4/11/2016 |
| 2/4/2016  | 2/29/2016 | 4/19/2016 |
| 2/7/2016  | 3/2/2016  | 4/20/2016 |
| 2/8/2016  | 3/3/2016  | 4/28/2016 |
| 2/9/2016  | 3/5/2016  |           |
| 2/11/2016 | 3/6/2016  |           |



#### **EXHIBIT D – Target Levels for Storm Water Sampling**

| <b>Parameter</b>       | <b>Value</b>                     |
|------------------------|----------------------------------|
| pH                     | 6.0 – 9.0 – instantaneous        |
| Total Suspended Solids | 400 mg/L – instantaneous maximum |
| Total Suspended Solids | 100 mg/L – annual average        |
| Oil & Grease           | 25 mg/L – instantaneous maximum  |
| Oil & Grease           | 15 mg/L – annual average         |
| Chemical Oxygen Demand | 120 mg/L – annual average        |
| Iron                   | 1.0 mg/L – annual average        |

#### **EXHIBIT E – Facility Access**

CSPA acknowledges that the inspection of the Facilities is potentially hazardous and involves certain risks, including the risks of serious bodily injury, death, and property damage, and CSPA assumes full and sole responsibility for bodily injury, death, or property damage arising out of or related to the inspection of the Facilities, whether caused by the negligence of Masonite or otherwise. CSPA and any of the officers, directors, agents, employees, sureties, insurers, successors and assigns of CSPA releases, waives, discharges, and covenants not to sue Masonite or Sierra Lumber from and for any and all claims, losses or damages and any claim or demands therefor (including, without limitation, legal fees and disbursements) on account of bodily injury, death, or property damage (including the loss of use therefrom) arising from or in any manner related or connected to the inspection of the Facilities whether cause by the negligence of Masonite, Sierra Lumber, or otherwise. Notwithstanding any provision or agreement to the contrary, CSPA shall defend and indemnify Masonite and Sierra Lumber against all claims, damages and losses (including without limitation legal fees and disbursements) for injury to persons or damage to property, including the loss of use therefrom, arising out of, arising from, or in any manner connected with CSPA's entry upon or inspection of the Facilities. CSPA agrees that this release, waiver of liability, and assumption of risk extends to all acts of negligence by Masonite and Sierra Lumber, and is intended to be as broad and inclusive as is permitted by the laws of California, and that if any portion thereof is invalid, CSPA agrees that the balance shall, notwithstanding, continue in full legal force and effect. CSPA agrees to abide by Masonite and Sierra Lumber's safety program, criteria, and requirements at the Facilities while performing any inspection

**CERTIFIED MAIL™**

LOZEAU DRURY LLP  
410 12th Street, Ste. 250  
Oakland CA 94607



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**Building: MAIN**  
**Room # PICK-UP**  
**Department:**



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**X-RAYED**

**AUG 23 2017**

**DOJ MAILROOM**

Attorney General  
U.S. Department of Justice  
Citizen Suit Coordinator  
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